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FORMS

OF

DECLARATIONS, PLEADINGS

AND OTHER

PROCEEDINGS

IN THE

Superior Courts of Common Law;

WITH

THE COMMON LAW PROCEDURE ACT, 1852,

AND

THE NEW RULES OF PRACTICE

OF

HILARY TERM, 1853;

WITH NOTES.

BY

HENRY GREENING, ESQ.

SPECIAL PLEADER.

SECOND EDITION.

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ADVERTISEMENT.

In consequence of the promulgation of the recent Rules of Practice, the Author has been induced to publish a new edition of this Work, comprising such Rules; although he has great satisfaction in informing the Profession that there is nothing whatever in these Rules which in any way affects the Forms previously published, and which may be as safely used now as before the Rules were promulgated.

The Work in its present shape, comprising, as it does, almost all common forms of pleadings and proceedings in the various actions in the Superior Courts of Common Law, as well as the Statute and Rules by which the practice of these Courts is regulated, must necessarily be a Work of great utility to the practitioner, though of little if any merit to the Author.

Two Statutes of frequent reference, relating to Costs, Notices of Action, and the General Issue "by statute," have also been included in this edition, as well as the Table of Officers' Fees.

The intention of the present edition is to supply a temporary deficiency in the books of practice

published before the New Rules were promulgated, and which are now in a great measure rendered useless, as all the written Rules of practice referred to in those works are annulled.

The new matter has been published as a Supplement to the former edition, so as to enable the purchasers of that Work to have the full benefit of the present edition at a little expense.

H. G.

Temple,
18*th January*, 1853.

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FORMS

OF

PROCEEDINGS, DECLARATIONS,

AND

OTHER PLEADINGS.

PART I.

WRITS OF SUMMONS—APPEARANCE—PARTICULARS OF DEMAND, AND JUDGMENT FOR WANT OF APPEARANCE (*a*).

1. Writ where the Defendant resides within the Jurisdiction.

VICTORIA, by the grace of God, &c.

To C. D. of , in the county of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you

---

(*a*) *Personal Actions, when Defendant resides within the Jurisdiction, to be commenced by Writ of Summons in the above Form.*

The Common Law Procedure Act, 1852, enacts, That all personal actions brought in her Majesty's superior courts of common law, where the defendant is residing or supposed to reside within the jurisdiction of the said courts, shall be commenced by writ of summons in the above form, and in every such writ and copy thereof the place and county of the residence or supposed residence of the party defendant, or wherein the defendant shall be or shall be supposed to be, shall be mentioned; and such writ shall be issued by any one of the officers of the said courts respectively by whom like process hath been heretofore issued from such court, or by such other officer as the court shall direct.—Sect. 2.

No Form or Cause of Action to be mentioned in Writ.

That it shall not be necessary to mention any form or cause of

do cause an appearance to be entered for you in our court of in an action at the suit of A. B.: and take notice,

---

action in any writ of summons, or in any notice of writ of summons, issued under the authority of this act.—Sect. 3.

Writ to state Names of all Defendants, and for only one Action.

That every writ of summons shall contain the names of all the defendants, and shall not contain the name or names of any defendant or defendants in more actions than one.—Sect. 4.

Writ to be dated of Day of Issuing, and tested in Name of Chief or senior Judge.

That every writ of summons shall bear date on the day on which the same shall be issued, and shall be tested in the name of the lord chief justice or lord chief baron of the court from which the same shall issue, or in case of a vacancy of such office, then in the name of a senior puisne judge of the said court.—Sect. 5.

Writ to be indorsed with Name and Abode of Attorney, or a Memorandum that Writ has been sued by Plaintiff in Person.

That every writ of summons shall be indorsed with the name and place of abode of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the court in which the same is sued out, then also with the name and place of abode of the attorney of such court in whose name such writ shall be taken out; and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ: and in case no attorney shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff in person, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's residence, if any such there be.—Sect. 6.

Attorney on Demand to declare whether Writ issued by his Authority, and to declare Name and Abode of his Client if ordered.—If Writ issued without Authority of Attorney, Proceedings to be stayed.

That every attorney whose name shall be indorsed on any writ issued by authority of this act shall, on demand in writing, made by or on behalf of any defendant, declare forthwith whether such writ has been issued by him or with his authority or privity; and if he shall answer in the affirmative, then he shall also, in case the court or a judge shall so order and direct, declare in writing, within a time to be allowed by such court or judge, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of the court from which such writ shall appear to have been issued; and if such attorney shall declare that the writ was not issued by him, or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the court or a judge.—Sect. 7.

that in default of your so doing, the said A. B. may proceed therein to judgment and execution. Witness, &c.

Indorsement of Debt and Costs on Writ and Copy of Writ for a Debt, with Notice that Proceedings will be stayed on Payment within Four Days.

That upon the writ and copy of any writ served for the payment of any debt the amount of the debt shall be stated, and the amount of what the plaintiff's attorney claims for the costs of such writ, copy, and service, and attendance to receive debt and costs, and it shall be further stated that upon payment thereof within four days to the plaintiff or his attorney, further proceedings will be stayed; which indorsement shall be written or printed in the following form or to the like effect:

"The plaintiff claims £ for debt, and £ for costs, and if the amount thereof be paid to the plaintiff or to his attorney within four days from the service hereof further proceedings will be stayed."

But the defendant shall be at liberty, notwithstanding such payment, to have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation.—Sect. 8.

Concurrent Writs may be issued.

That the plaintiff in any such action may, at any time during six months from the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be provided and kept for that purpose at the offices of the masters of the said courts, and shall be impressed upon the writ by the proper officer of the court out of which the original writ issued: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.—Sect. 9.

From Commencement of this Act certain Provisions of 2 *Will.* 4, *c.* 39, *repealed.*

That from the time when this act shall commence and take effect, so much of a certain act of parliament passed in the second year of the reign of his late Majesty King William the Fourth, intituled, "An Act for Uniformity of Process in Personal Actions in His Majesty's Courts of Law at Westminster," as relates to the duration of writs, and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this act, and any proceedings taken or to be taken thereon.—Sect. 10.

Renewal of Writs of Summons to save the Statute of Limitation, and for other Purposes.

That no original writ of summons shall be in force for more than six months from the day of the date thereof, including the day of such

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within (*six*) calendar months from the date thereof, or if renewed, from

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date; but if any defendant therein named may not have been served therewith, the original or concurrent writ of summons may be renewed at any time before its expiration for six months from the date of such renewal, and so from time to time during the currency of the renewed writ, by being marked with a seal, bearing the date of the day, month, and year of such renewal, such seal to be provided and kept for that purpose at the offices of the masters of the said superior courts, and to be impressed upon the writ by the proper officer of the court out of which such writ issued, upon delivery to him by the plaintiff or his attorney of a præcipe in such form as has heretofore been required to be delivered upon the obtaining of an alias writ; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons. —Sect. 11.

Renewal of Writs issued before this Act.

That where any writ of summons in any such action shall have been issued before, and shall be in force at, the commencement of this act, such writ may at any time before the expiration thereof be renewed under the provisions of and in the manner directed by this act; and where any writ, issued in continuation of a preceding writ according to the provisions of the said act of his late majesty King William the Fourth, shall be in force and unexpired, or where one month next after the expiration thereof shall not have elapsed at the commencement of this act, such continuing writ may, without being returned *non est inventus*, or entered of record according to the provisions of the said act of his late majesty King William the Fourth, be filed in the office of the court within one month next after the expiration of such writ, or within twenty days after the commencement of this act; and the original writ of summons in such action may thereupon, but within the same period of one month next after the expiration of the continuing writ, or within twenty days after the commencement of this act, be renewed under the provisions of and in the manner directed by this act; and every such writ shall after such renewal have the same duration and effect for all purposes, and shall, if necessary, be subsequently renewed, in the same manner as if it had originally issued under the authority of this act.—Sect. 12.

Production of renewed Writ Evidence of Commencement of Action.

That the production of a writ of summons purporting to be marked with the seal of the court, showing the same to have been renewed according to this act, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.—Sect. 13.

Writ may be served in any County.

That the writ of summons in any action may be served in any county.—Sect. 14.

the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the writ before service thereof.

This writ was issued by E. F. of , attorney for the said plaintiff [*or* "this writ was issued in person by A. B."], who resides at [*mention the city, town or parish, and also the name of the hamlet, street and number of the house of the plaintiff's residence, if any such*].

Indorsement to be made on the writ after service thereof.

This writ was served by X. Y. on L. M. ["the defendant" *or* "one of the defendants"], on Monday, the day of 18 .

(Signed) X. Y.

Indorsement of Service to be made.

That the person serving the writ of summons shall and he is hereby required, within three days at least after such service, to indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed under this act; and every affidavit of service of such writ shall mention the day on which such indorsement was made.—Sect. 15.

As to Service of Writ on Corporation and Inhabitants of Hundreds and Towns.

That every such writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer or secretary of such corporation; and every such writ issued against the inhabitants of a hundred or other like district may be served on the high constable thereof, or any one of the high constables thereof; and every such writ issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town or place not being part of a hundred or other like district, on some peace officer thereof.—Sect. 16.

Proceedings where personal Service cannot be effected, but Defendant knows of the Writ, and evades Service.

That the service of the writ of summons, wherever it may be practicable, shall, as heretofore, be personal; but it shall be lawful for the plaintiff to apply from time to time, on affidavit, to the court out of which the writ of summons issued, or to a judge; and in case it shall appear to such court or judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto, it shall be lawful for such court or judge to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the court or judge may seem fit.—Sect. 17.

2. Writ where the Defendant, being a British Subject, resides out of the Jurisdiction (*b*).

Victoria, by the grace of God, &c.

To C. D. of , in the county of

We command you, that within [*here insert a sufficient number of days within which the defendant might appear, with reference to the distance he may be at from England*] days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our court of in an action at the suit of A. B.; and take notice, that in default of your so doing, the said A. B. may, by leave of the court or a judge, proceed therein to judgment and execution. Witness, &c.

(*b*) *As to Actions against British Subjects residing out of the Jurisdiction of the Superior Courts.*

That in case any defendant, being a British subject, is residing out of the jurisdiction of the said superior courts, in any place except in Scotland or Ireland, it shall be lawful for the plaintiff to issue a writ of summons in the above form No. 2, which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the said superior courts; and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for the court or judge, upon being satisfied by affidavit that there is a cause of action, which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction of the said courts, in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such court or judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case: provided always, that the plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of inquiry, or before one of the masters of the said superior courts in the manner hereinafter provided, according to the nature of the case, as such court or judge may direct; and the making such proof shall be a condition precedent to his obtaining judgment,—Sect. 18.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within (*six*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the writ before the service thereof.

This writ is for service out of the jurisdiction of the court, and was issued by E. F. of , attorney for the said plaintiff [*or* "this writ was issued in person by A. B."], who resides at [*mention the city, town or parish, and also the name of the hamlet, street and number of the house of the plaintiff's residence, if any such*].

The indorsement required by the 8th section should be made on this writ, but should allow the defendant the time limited for appearance to pay the debt and costs.

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3. Writ where the Defendant, not being a British Subject, resides out of the Jurisdiction (*c*).

Victoria, by the grace of God, &c.

To C. D. late of , in the county of

We command you, that within [*here insert a sufficient number of days within which the defendant might appear,*

(*c*) *As to Actions against Foreigners residing out of the Jurisdiction of Superior Courts.*

That in any action against a person residing out of the jurisdiction of the said courts, and not being a British subject, the like proceedings may be taken as against a British subject resident out of the jurisdiction, save that in lieu of the form of writ of summons No. 2, the plaintiff shall issue a writ of summons according to the above form No. 3, and shall in manner aforesaid serve a notice of such last-mentioned writ upon the defendant therein mentioned, which notice shall be in the above form No. 3; and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad, and by leave of the court or a judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon. —Sect. 19.

Omission to insert or indorse Matters in or on Writ not to nullify it.

That if the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof any of the matters required by this

with reference to the distance he may be at from England] days after notice of this writ is served on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our court of in an action at the suit of A. B.; and take notice, that in default of your so doing, the said A. B. may, by leave of the court or a judge, proceed therein to judgment and execution. Witness, &c.

Memorandum to be subscribed on the writ.

N.B.—Notice of this writ is to be served within (*six*) calendar months from the date thereof, including the day of such date, and not afterwards.

Indorsements as in other cases.

Notice of the foregoing writ.

To G. H., late of [*Brighton in the county of Sussex, or* "now residing at" *Paris in France*].

Take notice, that A. B. of , in the county of England, has commenced an action at law against you C. D. in her Majesty's Court of Queen's Bench, by a writ of that

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act to be inserted therein or indorsed thereon, such writ or copy thereof shall not on that account be held void, but it may be set aside as irregular, or amended, upon application to be made to the court out of which the same shall issue, or to a judge; and such amendment may be made, upon any application to set aside the writ, upon such terms as to the court or judge may seem fit.—Sect. 20.

Substitution by Mistake or Inadvertence of one Form of Writ for another may be amended by Judge without Costs.

That if either of the forms of writ of summons marked respectively Nos. 1, 2 and 3, shall by mistake or inadvertence be substituted for any other of them, such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action, but the writ may, upon an *ex parte* application to a judge, whether before or after any application to set aside such writ or any proceeding thereon, and whether the same or notice thereof shall have been served or not, be amended by such judge without costs.—Sect. 21.

Writs for Service within and without Jurisdiction may be concurrent and vice versâ.

That a writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction, and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.—Sect. 22.

court, dated the day of A.D. 18 ; and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing, the said A. B. may, by leave of the court or a judge, proceed thereon to judgment and execution.

[*Here state amount of claim as required by 8th section, but allowing the defendant the time limited for appearance to pay debt and costs*].

(Signed) A. B. of &c.
[*or*
"E. F. of &c.
Attorney for A. B."]

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4. Special Indorsement (*d*).

[*After the indorsement required by the 8th section of this act, this special indorsement may be inserted.*]

(*d*) *Special Indorsement of the Particulars of Debts or liquidated Demands may be made on the Writ.—Special Indorsement to stand for Particulars of Demand.*

That in all cases *where the defendant resides within the jurisdiction of the court*, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note or cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt, or on a guarantee, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, the plaintiff *shall be at liberty* to make upon the writ of summons and copy thereof a special indorsement of the particulars of his claim, in the above form No. 4, or to the like effect; and when a writ of summons has been indorsed in the special form hereinbefore mentioned, the indorsement shall be considered as particulars of demand, and no further or other particulars of demand need be delivered, unless ordered by the court or a judge.—Sect. 25.

Appearance according to Provisions of Acts of 12 *Geo.* 1, *c.* 29, *and* 2 *Will.* 4, *c.* 39, *abolished.*

And with respect to the appearance of the defendant, and proceedings of the plaintiff in default of appearance, it is enacted as follows:

That from the time when this act shall commence and take effect,

The following are the particulars of plaintiff's claim :—

	£	s.	d.
1849, June 20. Half-year's rent to this day of house and premises in street, Westminster	25	10	0
Sept. 12. Ten sacks of flour at 40*s*. .	20	0	0
Dec. 1. Money received by defendant	17	0	0
	62	10	0
Paid . . .	15	0	0
Balance due	£47	10	0

Or,

To butcher's meat supplied between the 1st of January, 1849, and the 1st of January, 1850 . . . . £52

Paid . . . 20

Balance . . £32

[*If any account has been delivered, it may be referred to, with its date, or the plaintiff may give such a description of his claim as in a particular of demand, so as to prevent the necessity of an application for further particulars.*]

Or,

£50 principal and interest due on a bond dated the day of , conditioned for the payment of £100.

Or,

£90 principal and interest due on a covenant contained in a deed dated the day of , to pay £100 and interest.

Or,

A penalty of £100, under the statute 55 Geo. 3, c. 137.

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so much of a certain act of parliament passed in the twelfth year of the reign of his late Majesty King George the First, intituled "An Act to prevent frivolous and vexatious Arrests," and so much of the said act of his late Majesty King William the Fourth as relates to the entering an appearance for the defendant by the plaintiff in any action in any of the said superior courts, shall be repealed, except so far as may be necessary to support proceedings heretofore taken, and no appearance need be entered by the plaintiff for the defendant.—Sect. 26.

Or,

£85 on a bill of exchange for £100, dated the 2nd February, 1849, accepted, *or* drawn, *or* indorsed by the defendant.

Or,

£50 on a guarantee dated the 1st of January, 1850, whereby the defendant guaranteed the due payment by E. F. of goods supplied or to be supplied to him.

[*To any of the above may be added, in cases where interest is payable,* "the plaintiff also claims interest on £ of the above sum from the date of the writ until judgment."]

N.B.—Take notice, that if a defendant served with this writ within the jurisdiction of the court do not appear according to the exigency thereof, the plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed [with interest at the rate specified], and the sum of £ for costs, and issue execution at the expiration of eight days from the last day for appearance.

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5. Judgment for Want of Appearance (*e*).

In the Queen's Bench.

On the day of A.D. 18 .

[*Day of signing the judgment.*]

England, to wit. } A. B. in his own person [*or* "by his attorney,"] sued out a writ of summons against

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(*e*) *Final Judgment upon Writ specially indorsed in Default of Appearance.*

That in case of nonappearance by the defendant, where the writ of summons is indorsed in the special form hereinbefore provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a judge's order for leave to proceed under the provisions of this act, and a copy of the writ of

C. D., indorsed according to the Common Law Procedure Act, 1852, as follows:

[*Here copy special indorsement.*]

And the said C. E. has not appeared, therefore it is considered that the said A. B. recover against the said C. D. £ , together with £ for costs of suit.

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summons, at once to sign final judgment in the above form No. 5 (on which judgment no proceeding in error shall lie), for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs (to be fixed by the masters of the said superior courts, or any three of them, subject to the approval of the judges thereof, or any eight of them, of whom the lord chief justices and the lord chief baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way; and the plaintiff may upon such judgment issue execution at the expiration of eight days from the last day for appearance, and not before: provided always, that it shall be lawful for the court or a judge, either before or after final judgment, to let in the defendant to defend upon an application, supported by satisfactory affidavits accounting for the nonappearance, and disclosing a defence upon the merits.—Sect. 27.

Judgment for Non-Appearance where the Writ is not indorsed in the special Form.

That in case of such nonappearance, where the writ of summons is not indorsed in the special form hereinbefore provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a judge's order for leave to proceed under the provisions of this act, and a copy of the writ of summons, to file a declaration indorsed with a notice to plead in eight days, and to sign judgment by default at the expiration of the time to plead, so indorsed as aforesaid; and in the event of no plea being delivered, where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the writ of summons hereinbefore provided, and the amount claimed is indorsed on the writ of summons, the judgment shall be final, and execution may issue for an amount not exceeding the amount indorsed on the writ of summons, with interest at the rate specified, if any, and the sum fixed by the masters for costs, as hereinbefore mentioned, unless the plaintiff claim more, in which case the costs shall be taxed in the ordinary way: provided always, that in such case the plaintiff shall not be entitled to more costs than if he had made such special indorsement, and signed judgment upon nonappearance.—Sect. 28.

6. Memorandum of Appearance (*f*).

A., plaintiff, against C. D. *or* against C. D. and another, *or* against C. D. and others.	The defendant C. D. appears in person. E. F., attorney for C. D., appears for him.

[*If the defendant appears in person here give his address.*]

Entered the day of , 18 .

(*f*) *Appearance to be entered at any Time before Judgment.*

That the defendant may appear at any time before judgment, and if he appear after the time specified either in the writ of summons, or in any rule or order to proceed as if personal service had been effected, he shall, after notice of such appearance to the plaintiff or his attorney, as the case may be, be in the same position as to pleadings and other proceedings in the action as if he had appeared in time: provided always, that a defendant appearing after the time appointed by the writ shall not be entitled to any further time for pleading or any other proceeding than if he had appeared within such appointed time.—Sect. 29.

Appearance by the Defendant in Person to give an Address at which Proceedings may be served.

That every appearance by the defendant in person shall give an address, at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service; and if such address be not given the appearance shall not be received; and if an address so given shall be illusory or fictitious, the appearance shall be irregular, and may be set aside by the court or a judge, and the plaintiff may be permitted to proceed by sticking up the proceedings in the master's office without further service.—Sect. 30.

Mode of Appearance to Writ of Summons.

That the mode of appearance to every such writ of summons, or under the authority of this act, shall be by delivering a memorandum in writing according to the above form No. 6, or to the like effect. Such memorandum to be delivered to the proper officer or person in that behalf, and to be dated on the day of the delivery thereof.—Sect. 31.

Proceedings mentioned in Writ or Notice may be had and taken.

That all such proceedings as are mentioned in any writ or notice issued under this act shall and may be had and taken in default of a defendant's appearance.—Sect. 32.

Proceedings where only some of the Defendants appear to a Writ specially indorsed.

That in any action brought against two or more defendants, where the writ of summons is indorsed in the special form hereinbefore provided, if one or more of such defendants only shall appear, and another or others of them shall not appear, it shall and

7. Particulars of Demand.

[*Particulars of demand may be framed according to the form given for a special indorsement on the writ, which the statute says shall be sufficient* (*g*).]

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may be lawful for the plaintiff to sign judgment against such defendant or defendants only as shall not have appeared, and before declaration against the other defendant or defendants, to issue execution thereupon, in which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared: or the plaintiff may, before issuing such execution, declare against such defendant or defendants as shall have appeared, stating, by way of suggestion, the judgment obtained against the other defendant or defendants who shall not have appeared, in which case the judgment so obtained against the defendant or defendants who shall not have appeared shall operate and take effect in like manner as a judgment by default obtained before the commencement of this act against one or more of the several defendants in an action of debt before the commencement of this act.—Sect. 33.

(*g*) See section 25. This section leaves it *discretionary* with the plaintiff to make the special indorsement or not, but it should always be made when the defendant resides within the jurisdiction, or the plaintiff will be deprived of the costs of his declaration, upon judgment being signed for want of a plea.—See sect. 28.

It would seem from the paragraph preceding, sect. 58 of the statute, that it was intended to make some other provision with respect to particulars of demand, which is altogether omitted in the act.

PART II.

COMMENCEMENTS AND CONCLUSIONS OF DECLARATIONS.

1. Ordinary Form (*a*).

In the Queen's Bench [" Common Pleas," *or* " Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B., by E. F., his attorney [*or* "in person" *as the case may be*], sues C. D. (*b*) for [*here state the cause of action and conclude as follows, or to the like effect*]:

And the plaintiff claims £ [*or if the action is brought to recover specific goods,* " the plaintiff claims a return of the said goods, or their value, and £ for their detention"].

(*a*) The 54th section of the Common Law Procedure Act, 1852, enacts, that every declaration and other pleading shall be entitled of the proper court, and of the day of the month and the year when the same was pleaded, and shall bear no other time or date, and that every declaration and other pleading shall also be entered on the record made up for trial, and on the judgment roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the court or a judge. The 59th section of the same act enacts, that every declaration shall commence in the above form or to the like effect.

(*b*) If the defendant have a name of dignity, it must be stated; but it is unnecessary, in an action against a peer or member of the House of Commons, to describe him as having privilege of peerage or of parliament; Cantwell *v.* Earl of Stirling, 6 Moore & Payne, 297; S. C. 8 Bing. 174.

2. By a surviving Partner or other joint Contractor (*c*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B., who hath survived G. H., by E. F., his attorney [*or* "in person" *as the case may be*], sues C. D.

(*c*) Where there are several parties to a contract, the action should be brought by or against all of them, if living, or, if some are dead, by or against the survivors. Before the Common Law Procedure Act, 1852, if an action had been brought on a joint contract by one of several partners or joint contractors, the plaintiff would have been nonsuited, or had a verdict against him. So in an action for a tort, if too many persons had been made co-plaintiffs, and the objection appeared in the record, it might have been taken advantage of, either by demurrer in arrest of judgment, or by writ of error; or if the objection did not appear on the face of the pleadings, it would have been ground of nonsuit on the trial. If a party who ought to have been joined as a plaintiff in an action of tort had been omitted, it was only ground for plea in abatement, or for apportionment of the damages on the trial. By the late statute, however, it is enacted that it shall and may be lawful for the court or a judge, at any time before the trial of any cause, to order that any person or persons, not joined as plaintiff or plaintiffs in such cause, shall be so joined; or that any person or persons, originally joined as plaintiff or plaintiffs, shall be struck out from such cause, if it shall appear to such court or judge that injustice will not be done by such amendment, and that the person or persons, to be added as aforesaid, consent, either in person or by writing, under his, her, or their hands, to be so joined, or that the person or persons, to be struck out as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent in manner aforesaid to be so struck out; and such amendment shall be made upon such terms as to the amendment of the pleadings (if any), postponement of the trial, and otherwise, as the court or judge by whom such amendment is made shall think proper; and when any such amendment shall have been made, the liability of any person or persons who shall have been added as co-plaintiff or co-plaintiffs, shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such cause; see section 34.

Nonjoinder and Misjoinder of Plaintiffs may be amended at the Trial, as in Cases of Amendments of Variances under 3 & 4 Will. 4, c. 42.

That in case it shall appear at the trial of any action that there has been a misjoinder of plaintiffs, or that some person or persons,

for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £ [*or if the action is brought to recover specific goods,* "the plaintiff claims a return of the said goods, or their value, and £ for their detention."]

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not joined as plaintiff or plaintiffs, ought to have been so joined, and the defendant shall not, at or before the time of pleading, have given notice in writing that he objects to such nonjoinder, specifying therein the name or names of such person or persons, such misjoinder or nonjoinder may be amended, as a variance, at the trial by any court of record holding plea in civil actions, and by any judge sitting at nisi prius, or other presiding officer, in like manner as to the mode of amendment and proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as in the case of amendments of variances under an act of parliament passed in the session of parliament held in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the further Amendment of the Law, and the better Advancement of Justice," if it shall appear to such court, or judge, or other presiding officer, that such misjoinder or nonjoinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons, to be added as aforesaid, consent, either in person or by writing, under his, her, or their hands, to be so joined, or that the person or persons, to be struck out as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent, in manner aforesaid, to be so struck out; and such amendment shall be made upon such terms as the court, or judge, or other presiding officer, by whom such amendment is made, shall think proper; and when any such amendment shall have been made, the liability of any person or persons who shall have been added as co-plaintiff or co-plaintiffs shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such action.—See section 35.

Upon Notice or Plea of Nonjoinder of Plaintiffs, Proceedings may be amended.

That in case such notice be given, or any plea in abatement of nonjoinder of a person or persons as co-plaintiff or co-plaintiffs, in cases where such plea in abatement may be pleaded, be pleaded by the defendant, the plaintiff shall be at liberty, without any order, to amend the writ and other proceedings before plea, by adding the name or names of the person or persons named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the costs of and occasioned by such amendment only, and in such case the defendant shall be at liberty to plead *de novo*.—See section 36.

3. Against a surviving Partner or other joint Contractor (*d*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B., by E. F., his attorney [*or* "in person" *as the case may be*], sues C. D., who has survived G. H.,

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(*d*) If an action be brought against one of several partners or joint contractors, it can only be pleaded in abatement; but before the Common Law Procedure Act, 1852, the joinder of too many defendants in an action of contract was ground of nonsuit. By that statute however it is enacted, that it shall and may be lawful for the court or a judge in the case of the joinder of too many defendants in any action on contract, at any time before the trial of such cause, to order that the name or names of one or more of such defendants be struck out, if it shall appear to such court or judge that injustice will not be done by such amendment; and the amendment shall be made upon such terms as the court or judge, by whom such amendment is made, shall think proper; and in case it shall appear at the trial of any action on contract that there has been a misjoinder of defendants, such misjoinder may be amended, as a variance, at the trial, in like manner as the misjoinder of plaintiffs has been hereinbefore directed to be amended, and upon such terms as the court, or judge, or other presiding officer, by whom such amendment is made, shall think proper.—See section 37.

Upon Plea in Abatement for Non-joinder of Defendants, Proceedings may be amended.

That in any action on contract where the nonjoinder of any person or persons as a co-defendant or co-defendants has been pleaded in abatement, the plaintiff shall be at liberty, without any order, to amend the writ of summons and the declaration, by adding the name or names of the person or persons named in such plea in abatement as joint contractors, and to serve the amended writ upon the person or persons so named in such plea in abatement, and to proceed against the original defendant or defendants, and the person or persons so named in such plea in abatement: Provided that the date of such amendment shall, as between the person or persons so named in such plea in abatement and the plaintiff, be considered for all purposes as the commencement of the action.—See section 38.

Provision in the Case of subsequent Proceedings against the Persons named in a Plea in Abatement for Non-joinder of Defendants.

That in all cases after such plea in abatement and amendment, if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with

for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £ [*or if the action is brought to recover specific goods*, "the plaintiff claims a return of the said goods, or their value, and £ for their detention"].

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4. By Husband and Wife(*e*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B. and C., his wife, by E. F., their attorney [*or* "in person," *as the case may be*], sue G. H. for [*here*

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the original defendant or defendants, the original defendant or defendants shall be entitled as against the plaintiff to the costs of such plea in abatement and amendment; but if at such trial it shall appear that the original defendant or any of the original defendants is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same, together with the costs of the plea in abatement and amendment, as costs in the cause against the original defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person: Provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement. —See section 39.

(*e*) A woman cannot sue alone during coverture, and husband and wife must join in an action on any contract made with the wife before marriage when the cause of action is complete before coverture. Before the late statute, where an injury was done to the wife, it was necessary for the husband to bring a separate action for any special damage he had been put to thereby; but by the 40th section of the Common Law Procedure Act it is enacted, that in any action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the court or a judge shall think fit; provided that, in the case of the death of either plaintiff, such suit, so far only as relates to the causes of action, if any, which do not survive, shall abate.

state the cause of action, and conclude as follows, or to the like effect]:

And the plaintiffs claim £ [*or if the action is brought to recover specific goods,* "the plaintiffs claim a return of the said goods, or their value, and £ for their detention"].

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5. Against Husband and Wife (*f*).

In the Queen's Bench ["Common Pleas" *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B., by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D. and G., his wife, for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £ [*or if the action is brought to recover specific goods,* "the plaintiff claims a return of the said goods, or their value, and £ for their detention"].

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6. By an Executor.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., executor of the last will and testament of G. H., deceased, by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff as such executor claims £ [*or if the action is brought to recover specific goods,* "the plaintiff

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(*f*) A woman cannot be sued alone during coverture, but she should be joined with her husband in any action upon any contract made by her before marriage.

as such executor claims a return of the said goods or their value, and £ for their detention"].

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7. Against an Executor.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D., executor of the last will and testament of G. H., deceased, for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £ .

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8. By an Administrator.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., administrator of the goods and chattels which were of one G. H., deceased, at the time of his death, who died intestate, by E. F., his attorney, [*or* "in person," *as the case may be*], sues C. D. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff as such administrator claims £

[*or if the action is brought to recover specific goods,* "the plaintiff as such administrator claims a return of the said goods or their value, and £ for their detention"].

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9. Against an Adminstrator.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., by E. F., his attorney [*or* "in person,"

as the case may be], sues C. D., administrator of the goods and chattels which were of one G. H., deceased, at the time of his death, who died intestate, for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £ .

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10. By an Executor or Administrator against an Executor or Administrator.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., executor of the last will and testament of G. H., deceased [*or* "administrator of the goods and chattels which were of G. H., deceased, at the time of his death, who died intestate"], by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D., executor of the last will and testament of L. M., deceased [*or* "administrator of the goods and chattels which were of L. M., deceased, at the time of his death, who died intestate"] for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff as such executor claims £ .

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11. By a surviving Executor.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., surviving executor of the last will and testament of G. H., deceased, by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D. for [*here state the*

cause of action, and conclude as follows, or to the like effect]:

And the plaintiff as such executor claims £ [*or if the action is brought to recover specific goods,* "the plaintiff as such executor claims a return of the said goods or their value, and £ for their detention."]

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12. By a surviving Administrator.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., surviving administrator of the goods and chattels which were of J. H., deceased, at the time of his death, who died intestate, by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff as such administrator claims £ [*or if the action is brought to recover specific goods,* "the plaintiff as such administrator claims a return of the said goods or their value, and £ for their detention"].

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13. Against a surviving Executor or Administrator.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue*].—A. B., by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D., surviving executor of the last will and testament of G. H., deceased [*or* "surviving administrator of the goods and chattels which were of G. H., deceased, at the time of his death, who died intestate"], for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £ .

14. By Husband and Wife, the Wife being Executrix.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue*].—A. B. and C., his wife, which said C. is executrix of the last will and testament of G. H., deceased, by E. F., their attorney [*or* "in person," *as the case may be*], sue L. M. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the said A. B. and C., his wife, as such executrix as aforesaid, claim £ , [*or if the action is brought to recover specific goods*, "the said A. B. and C., his wife, as such executrix as aforesaid, claim a return of the said goods or their value, and £ for their detention"].

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15. By Husband and Wife, the Wife being Administratrix.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue*].—A. B. and C. his wife, which said C. is administratrix of the goods and chattels which were of G. H., deceased, at the time of his death, who died intestate, by E. F., their attorney [*or* "in person," *as the case may be*], sue L. M. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the said A. B. and C., his wife, as such administratrix as aforesaid, claim £ [*or if the action is brought to recover specific goods*, "the said A. B. and C., his wife, as such administratrix as aforesaid, claim a return of the said goods or their value, and £ for their detention"].

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16. Against Husband and Wife, the Wife being Executrix or Administratrix.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., by P. Q., his attorney [*or* "in person," *as the case may be*], sues C. D., and E. his wife, which said E. is executrix of the last will and testament of G. H., deceased [*or* "which said E. is administratrix of the goods and chattels which were of G. H., deceased, at the time of his death, who died intestate"], for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £

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17. By an Administrator de bonis non, with the Will annexed.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., administrator, with the last will and testament of G. H., deceased, annexed, of the goods and chattels which were of the said G. H., deceased, at the time of his death left unadministered by P. Q. and R. S. in their lifetime, now respectively deceased, who were the executors of the last will and testament of the said G. H., deceased, by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff as such administrator claims £

[*or if the action is brought to recover specific goods,* plaintiff, as such administrator, claims a return of the said goods or their value, and £ for their detention"].

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18. Against an Administrator de bonis non.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D., administrator of the goods and chattels which were of G. H., deceased, at the time of his death left unadministered by P. Q. and R. S. in their lifetime, now respectively deceased, who were the executors of the last will and testament of the said G. H., deceased, for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £ .

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19. By the Assignees of a Bankrupt.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B. and C. D., assignees of the estate and effects of G. H., a bankrupt, according to the form of the statutes in force concerning bankrupts, by E. F., their attorney [*or* "in person," *as the case may be*], sues K. L. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiffs, as such assignees, claim £ [*or if the action is brought to recover specific goods,* "the plaintiffs, as such assignees, claim a return of the said goods or their value, and £ for their detention"].

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20. By the Assignee of an Insolvent Debtor.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., assignee of the estate and effects of

G. H., an insolvent debtor according to the form of the statutes in force for the relief of insolvent debtors in England, by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff, as such assignee, claims £ [*or if the action is brought to recover specific goods,* "the plaintiff, as such assignee, claims a return of the said goods or their value, and £ for their detention"].

21. By an Infant (*g*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

[*Venue.*]—A. B., by E. F., who is admitted by the court here to prosecute for the said plaintiff, who is an infant within the age of twenty-one years, as the next friend of the said plaintiff, sues C. D. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £ [*or if the action is brought to recover specific goods,* "the plaintiff claims a return of the said goods or their value, and £ for their detention"].

22. After Plea of Non-joinder (*h*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B., by E. F., his attorney [*or* "in his own proper person" *as the case may be*], sues C. D. and G. H.,

(*g*) An infant must sue by *prochein amy*, unless he sue as co-executor, in which case the executors of full age may appoint an attorney for themselves and the infant, as they make but one representative; Tidd's Pr. 9th ed. 99.

(*h*) The Common Law Procedure Act, 1852, enacts, that in all cases in which, after a plea in abatement of the nonjoinder of another person as defendant, the plaintiff shall, without having proceeded to

which said C. D. has heretofore pleaded in abatement the nonjoinder of the said G. H., for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff claims £

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trial on an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, or shall amend by adding the omitted defendant or defendants, the commencement of the declaration shall be in the form above given, or to the like effect.—See section 60.

That in any action on contract where the nonjoinder of any person or persons as a co-defendant or co-defendants has been pleaded in abatement, the plaintiff shall be at liberty, without any order, to amend the writ of summons and the declaration, by adding the name or names of the person or persons named in such plea in abatement as joint contractors, and to serve the amended writ upon the person or persons so named in such plea in abatement, and to proceed against the original defendant or defendants, and the person or persons so named in such plea in abatement: provided that the date of such amendment shall, as between the person or persons so named in such plea in abatement and the plaintiff, be considered for all purposes as the commencement of the action.—See section 38.

That in all cases after such plea in abatement and amendment, if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original defendant or defendants, the original defendant or defendants shall be entitled as against the plaintiff to the costs of such plea in abatement and amendment; but if at such trial it shall appear that the original defendant or any of the original defendants is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same, together with the costs of the plea in abatement and amendment, as costs in the cause against the original defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person; provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.—See section 39.

23. By Public Officer of a Banking Company.

In the Queen's Bench [" Common Pleas," *or* " Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B., one of the registered public officers of certain persons united in copartnership for the purpose of carrying on and carrying on the trade and business of bankers in England under the name, style or firm of [*state the name*] according to the provisions of the statute made and passed in the seventh year of the reign of his late Majesty King George the Fourth for the better regulating of copartnerships of certain bankers in England, by E. F., his attorney [*or* "in person" *as the case may be*], sues C. D. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff, as such public officer as aforesaid, claims £

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24. By Clerk or Treasurer to a Company empowered to sue under a Statute.

In the Queen's Bench [" Common Pleas," *or* " Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B., clerk [*or* "treasurer"] to a certain company called the Company, according to the force, form and effect of a certain act of parliament made and passed in the year of the reign of her present Majesty, by E. F., his attorney [*or* "in person" *as the case may be*], sues C. D. for [*here state the cause of action, and conclude as follows, or to the like effect*]:

And the plaintiff, as such clerk [*or* "treasurer"] as aforesaid, claims £

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25. Against a Defendant sued by a wrong Name (*i*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of A.D. 18 .

Venue.]—A. B., by E. F., his attorney [*or* "in person"], sues *John Jones* (who by the name of *Joseph Jones* has been summoned to answer the said A. B.) for [*here state the cause of action, and conclude as follows, or to the like effect*]: And the plaintiff claims £ .

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26. After removal of cause from inferior Court.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of in the year of our Lord 18 .

Venue.]—Whereas a certain plaint was levied in an inferior court of record of our lady the now Queen, to wit, the Court of , against C. D., at the suit of A. B., in an action of debt: And whereas by a writ of certiorari duly issued on the day of last out of her Majesty's Court of at Westminster, in the county of Middlesex, the plaint aforesaid, with all things touching the same, together with that writ and the return thereto, were sent to our lady the Queen before the Queen herself [*or in the Common Pleas* "to the justices of our lady the Queen," *or in the Exchequer* "to the barons of her said Majesty's Exchequer"] on the day of last; and, therefore, the said A. B., by his attorney, here complains against the said C. D.: For that, &c.

(*i*) By the 3 & 4 Will. 4, c. 42, s. 11, it is enacted, "that no plea in abatement for a misnomer shall be allowed in any personal action, but that in all cases in which a misnomer would but for that act have been by law pleadable in abatement; in such actions the defendant shall be at liberty to cause the declaration to be amended, at the costs of the plaintiff, by inserting the right name, upon a judge's summons, founded on an affidavit of the right name; and in case such summons shall be discharged, the costs of such application shall be paid by the party applying, if the judge shall think fit." The above form is therefore given to prevent an application of this kind.

PART III.

COUNTS ON CONTRACTS.

Section I.—The Common Counts.

1. Goods sold and delivered, or bargained and sold.

For money payable by the defendant to the plaintiff (*a*) for *goods* (*b*) sold and delivered [*or* "bargained and sold" (*c*)] by the plaintiff to the defendant.

2. Work and Materials (*d*).

For money payable by the defendant to the plaintiff (*a*) for work done and materials provided by the plaintiff for the defendant at his request.

3. Money lent.

For money payable by the defendant to the plaintiff (*a*) for money lent by the plaintiff to the defendant.

(*a*) The words "money payable," &c., should precede the common money counts, but need only be inserted in the first. The second and subsequent counts may begin "And for" &c.

(*b*) If the word "goods" do not properly describe the thing sold, an appropriate word may be used instead, such as "fixtures," "horses," "cows," "sheep," &c.

(*c*) The count for goods "bargained and sold" should only be used where there has been no delivery of the goods, &c. Where the goods, &c. have been delivered, whether to the defendant or to a third person at his request, the count for "goods sold and delivered" should be used.

(*d*) This count will be sufficient in any case *where the work has been done*, though there be a written contract, if that contract be not under seal. If the work have not been done it will generally be necessary to declare specially on the contract.

This count has been decided to be applicable to a farrier's bill, the medecines being considered as materials used about the work, 3

4. Money paid.

For money payable by the defendant to the plaintiff (*e*) for money paid by the plaintiff for the use of the defendant at his request.

5. Money received.

For money payable by the defendant to the plaintiff (*e*) for money received by the defendant for the use of the plaintiff.

6. On Accounts stated.

For money payable by the defendant to the plaintiff (*e*) for money found to be due from the defendant to the plaintiff on accounts stated between them.

7. For an Estate sold.

For money payable by the defendant to the plaintiff (*e*) for a messuage and lands sold and conveyed by the plaintiff to the defendant.

8. For the Goodwill of a Business.

For money payable by the defendant to the plaintiff (*e*) for the goodwill of a business of the plaintiff sold and given up by the plaintiff to the defendant.

9. For the Use of a House and Land.

For money payable by the defendant to the plaintiff (*e*) for the defendant's use, by the plaintiff's permission, of messuages and lands of the plaintiff.

Campb. 37; and for the same reason it is no doubt applicable to an apothocary's bill; and generally to those cases where that for which a remuneration is sought is properly described as "work," without setting forth what sort or manner of work it was. 2 Wms. Saund. 350, n, 2.

(*e*) See note (*a*), *ante*, 31.

10. For the Use of a Fishery.

For money payable by the defendant to the plaintiff (*f*) for the defendant's use, by the plaintiff's permission, of a fishery of the plaintiff.

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11. For Copyhold Fines.

For money payable by the defendant to the plaintiff (*f*) for fines payable by the defendant as tenant of customary tenements of the manor of to the plaintiff, as lord of the said manor, for the admission of the defendant into the said customary tenements.

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12. For Hire of Goods, &c.

For money payable by the defendant to the plaintiff (*f*) for the hire of [*as the case may be*], by the plaintiff let to hire to the defendant.

---

13. For Freight.

For money payable by the defendant to the plaintiff (*f*) for freight for the conveyance by the plaintiff for the defendant, at his request, of goods in ships.

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14. For Demurrage.

For money payable by the defendant to the plaintiff (*f*) for the demurrage of a ship of the plaintiff, kept on demurrage by the defendant.

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15. For the Use of pasture Land, and the Eatage of the Grass.

For money payable by the defendant to the plaintiff (*f*) for the defendant's use, by the plaintiff's permission, of certain pasture land, and the eatage of the grass thereon growing.

(*f*) See note (*a*), *ante*, 31.

16. For Board and Lodging.

For money payable by the defendant to the plaintiff (*g*) for board and lodging found and provided by the plaintiff for the defendant at his request.

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17. For the Use of furnished Apartments.

For money payable by the defendant to the plaintiff (*g*) for the defendant's use, by the plaintiff's permission, of certain furnished rooms and apartments of the plaintiff.

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18. For the Use of Unfurnished Apartments.

For money payable by the defendant to the plaintiff (*g*) for the defendant's use, by the plaintiff's permission, of certain rooms and apartments of the plaintiff.

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19. For the Use of a Pew in a Church.

For money payable by the defendant to the plaintiff (*g*) for the defendant's use, by the plaintiff's permission, of a certain pew and seats in a certain parish church.

---

20. For Warehouse-room of Goods.

For money payable by the defendant to the plaintiff (*g*) for warehouse room by the plaintiff, provided for the keeping of certain goods and chattels for the defendant at his request.

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21. For the Standing of Carriages.

For money payable by the defendant to the plaintiff (*g*) for the standing of certain carriages by the plaintiff taken care of for the defendant at his request.

(*g*) See note (*a*), *ante*, 31.

22. For Tithes bargained and sold (*h*).

For money payable by the defendant to the plaintiff (*i*) for tithes bargained and sold by the plaintiff to the defendant at his request, and by the defendant by virtue of that bargain and sale had taken and retained to and for his own use.

---

23. For Necessaries found and provided for Defendant.

For money payable by the defendant to the plaintiff (*i*) for meat, drink, washing, lodging and other necessaries, by the plaintiff found and provided for the defendant at his request.

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24. For Necessaries found and provided for third Persons.

For money payable by the defendant to the plaintiff (*i*) for meat, drink, washing, lodging and other necessaries, by the plaintiff found and provided, at the request of the defendant, for E. F.

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25. For Horse-meat and Stabling.

For money payable by the defendant to the plaintiff (*i*) for horse meat, stabling, care and attendance, by the plaintiff found and provided at the request of the defendant.

(*h*) This count cannot be sustained unless there be a composition in lieu of tithes. If there be no composition, the declaration should be in debt on the statute for not setting out the tithe. By the 5 & 6 Will. 4, c. 74, it is enacted, "that from and after the passing of that act no suit or other proceeding shall be had or instituted in any of his Majesty's Courts in England having cognizance of such matter for or in respect of any tithes, oblations or compositions withheld of or under the yearly value of £10, (save and except in the cases provided for in the two acts of parliament therein firstly recited,) but that all complaints touching the same shall, except in the case of Quakers, be heard and determined only under the powers and provisions contained in the said two first-recited acts of parliament in such and the same manner as if the same were therein set forth and re-enacted."

(*i*) See note (*a*), *ante*, 31.

26. For the Agistment of Cattle.

For money payable by the defendant to the plaintiff(*k*) for agisting, depasturing and feeding of cattle by the plaintiff for the defendant at his request.

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27. By outgoing against incoming Tenant for Crops, &c.

For money payable by the defendant to the plaintiff(*k*), for and in respect of the plaintiff's relinquishing and giving up a certain farm and premises, with the appurtenances, together with the use and benefit of manure, work, labour and materials, seeds, crops, goods and chattels thereon, in favour of the defendant, and at his request.

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28. For a Passage on board a Ship.

For money payable by the defendant to the plaintiff(*k*) for the passage of the defendant in a certain vessel of the plaintiff at the request of the defendant.

---

29. For Wages.

For money payable by the defendant to the plaintiff(*k*) for wages of the plaintiff, due from the defendant to the plaintiff, as the hired servant of the defendant.

---

30. For Pilotage.

For money payable by the defendant to the plaintiff(*k*) for pilotage due from the defendant to the plaintiff for the pilotage of a certain vessel of the defendant at his request.

(*k*) See note (*a*), *ante*, 31.

31. For Salvage.

For money payable by the defendant to the plaintiff(*l*) for salvage of a certain anchor and cable by the plaintiff saved for and delivered to the defendant.

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32. For Tolls.

For money payable by the defendant to the plaintiff(*l*) for tolls due from the defendant to the plaintiff in respect of the defendant having brought into a certain market, called , and sold therein divers live cattle.

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33. For petty Customs.

For money payable by the defendant to the plaintiff(*l*) for petty customs due to the plaintiff in respect of goods by the defendant imported into the port of .

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34. For Premiums of Insurance.

For money payable by the defendant to the plaintiff(*l*) for certain premiums of insurance, due from the defendant to the plaintiff in respect of his having, at the request of the defendant, underwritten and subscribed divers policies of insurance for the defendant, for the insurance of money upon divers ships and vessels, goods, merchandize, chattels and effects by the plaintiff insured for the defendant, and at his request.

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35. For the Carriage of Goods.

For money payable by the defendant to the plaintiff (*l*) for the carriage of goods by the plaintiff for the defendant, and at his request.

(*l*) See note (*a*), *ante*, 31.

36. For Lighterage.

For money payable by the defendant to the plaintiff (*l*) for the lighterage of goods by the plaintiff, conveyed, shipped and landed, at the request of the defendant.

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37. For Lighterage, Wharfage and Warehouse Room.

For money payable by the defendant to the plaintiff (*l*) for the lighterage, wharfage and warehouse room of goods by the plaintiff shipped, landed and kept for the defendant at his request.

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38. For a Schoolmaster's Bill.

For money payable by the defendant to the plaintiff (*l*) for work done by the plaintiff as a schoolmaster at the request of the defendant, and for meat, drink, washing, lodging, goods, chattels and other necessaries by the plaintiff found and provided for A. B. at the request of the defendant.

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39. For an Undertaker's Bill.

For money payable by the defendant to the plaintiff (*l*) for work done by the plaintiff, as an undertaker of funerals, at the request of the defendant, and for hearses, coaches, horses, materials, chattels, and other necessary things used and applied in and about the said work for the defendant at his request.

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40. For an Attorney's Bill.

For money payable by the defendant to the plaintiff (*l*) for work done by the plaintiff for the defendant at his request, and for money paid by the plaintiff for the use of the defendant at his request.

(*l*) See note (*a*), *ante*, 31.

41. For an Apothecary's Bill.

For money payable by the defendant to the plaintiff (*m*) for work done by the plaintiff for the defendant at his request, and for medicines and other necessary things by the plaintiff provided for the defendant at his request.

---

42. For Interest of Money.

For money payable by the defendant to the plaintiff (*m*) for interest upon money lent by the plaintiff to the defendant [*or* "money due from the defendant to the plaintiff"], and by the plaintiff forborne to the defendant at his request.

---

43. For Money due on an Award.

For money payable by the defendant to the plaintiff (*m*) upon and by virtue of a certain award made by E. F. upon and by virtue of a certain submission made by the plaintiff and the defendant to the award, order and determination of the said E. F.

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44. For the Moorage of Ships.

For money payable by the defendant to the plaintiff (*m*) for the mooring and fastening of a certain ship or vessel to a certain chain of the plaintiff by his permission at the request of the defendant.

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45. For the Use of a Patent.

For money payable by the defendant to the plaintiff for the license of the plaintiff to the defendant to use and for using a certain patent invention of the plaintiff.

(*m*) See note (*a*), *ante*, 31.

46. For a Breach of Promise to marry generally.

For that the plaintiff and defendant agreed to marry one another, and a reasonable time for such marriage has elapsed, and the plaintiff has always been ready and willing to marry the defendant, yet the defendant has neglected and refused to marry the plaintiff.

---

47. For a Breach of Promise to marry on a certain day.

For that the plaintiff and defendant agreed to marry one another on a day now elapsed, and the plaintiff was ready and willing to marry the defendant on that day, yet the defendant neglected and refused to marry the plaintiff.

---

48. For Breach of the Warranty of a Horse.

For that the defendant by warranting a horse to be then sound and quiet to ride sold the said horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

---

49. For not loading pursuant to Charter-party.

For that the plaintiff and defendant agreed by charter-party that the plaintiff's ship called the "Ariel" should, with all convenient speed, sail to R., or so near thereto as she could safely get, and that the defendant should there load her with a full cargo of tallow or other lawful merchandize, which she should carry to H., and there deliver on payment of freight £ per ton, and that the defendant should be allowed ten days for loading, and ten days for discharge, and ten days for demurrage, if required, at £ per day, and that the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said ship at R., and that the time for so doing has elapsed, yet the defendant made default in loading the agreed cargo.

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50. Upon a Lease for Rent.

For that the plaintiff let to the defendant a house, No. 401, Piccadilly, for seven years, to hold from the day of A.D. at £ a year, payable quarterly, of which rent quarters are due and unpaid.

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51. Upon a Covenant to repair.

For that the plaintiff, by deed, let to the defendant a house, No. 401, Piccadilly, to hold for seven years from the day of A.D. and the defendant by the said deed covenanted with the plaintiff well and substantially to repair the said house during the said term [*according to the covenant*], yet the said house was during the said term out of good and substantial repair.

---

52. On a common Money Bond (*n*).

For that the defendant on the day of in the year of our Lord 18 by his writing obligatory under seal acknowledged himself to be held and firmly bound to the plaintiff in £ .

(*n*) It is not necessary to assign any breach of the condition of a common money bond; but the 8 & 9 Will. 3, c. 11, enacted, that in all actions upon any bond or bonds for *nonperformance of any covenants or agreements in any indenture, deed or writing contained*, the plaintiff or plaintiffs *may* assign as many breaches as he or they shall think fit; and the jury upon trial of such action or actions shall and may assess not only such damages and costs of suit as had theretofore usually been done in such cases, but also damages for such of the said breaches so assigned as the plaintiff upon the trial of the issue shall prove to have been broken, and that the like judgment shall be entered on such verdict as theretofore had been usually done in such like actions.

This statute was made in favour of defendants, and has therefore received a liberal construction, the word "*may*" having been read as "*must*," so that it is compulsory on the plaintiff to assign breaches under this act when the bond is within the provisions of the statute; and it will be observed, that the Common Law Procedure Act, 1852, expressly provides that nothing in that act contained shall in any way affect the provisions of the statute of 8 & 9 Will. 3, as to the assignment or suggestion of breaches, or as to judgment for a penalty as a security for damages in respect of further breaches. See sect. 96.

53. On a Mortgage Deed for Principal Money and Interest.

For that the defendant on the day of in the year of our Lord [*date of deed*] by deed covenanted with the plaintiff to pay him £ and interest for the same, after the rate of £5 per centum per annum, on the day of now past, but hath not paid the same.

SECTION II.

THE COMMON COUNTS IN ACTIONS ON CONTRACTS AT THE SUIT OF OR AGAINST PERSONS SUING OR SUED IN PARTICULAR CHARACTERS.

1. By a surviving Partner or other Joint Contractor.

[*Commencement, ante,* 16.]

For money payable by the defendant to the plaintiff and the said G. H. (*a*) for goods sold and delivered [*or* "bargained and sold"] by the plaintiff and the said G. H. to the defendant.

And for work done and materials provided by the plaintiff and the said G. H. for the defendant at his request.

And for money lent by the plaintiff and the said G. H. to the defendant.

And for money paid by the plaintiff and the said G. H. for the defendant at his request.

And for money received by the defendant for the use of the plaintiff and the said G. H.

And for money found to be due from the defendant to the plaintiff and the said G. H. on accounts stated between them.

[*Conclusion, ante,* 17.]

2. Against a surviving Partner or other Joint Contractor.

[*Commencement, ante,* 18.]

For money payable by the defendant and the said G. H. (*a*) to the plaintiff for goods sold and delivered [*or*

(*a*) These words, "money payable," &c., should only be inserted in the first of the common counts The second and subsequent counts may begin "and for," &c., as above.

"bargained and sold"] by the plaintiff to the defendant and the said G. H.

And for work done and materials provided by the plaintiff for the defendant and the said G. H. at their request.

And for money lent by the plaintiff to the defendant and the said G. H.

And for money paid by the plaintiff for the use of the defendant and the said G. H. at their request.

And for money received by the defendant and the said G. H. for the use of the plaintiff.

And for money found to be due from the defendant and the said G. H. to the plaintiff on accounts stated between them.

[*Conclusion, ante,* 19.]

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3. By Husband and Wife.

[*Commencement, ante,* 19.]

For money payable by the defendant to the said C. whilst she was sole and unmarried (*b*), for goods sold and delivered [*or* "bargained and sold"] by the said C. to the defendant.

And for work done and materials provided by the said C. for the defendant at his request.

And for money lent by the said C. to the defendant.

And for money paid by the said C. for the use of the defendant at his request.

And for money received by the defendant for the use of the said C.

And for money found to be due from the defendant to the said C. on accounts stated between them.

[*Conclusion, ante,* 20.]

(*b*) The words "money payable," &c., should only be inserted in the first of the common counts. The second and subsequent counts may be in the above form.

4. Against Husband and Wife.

[*Commencement, ante*, 20.]

For money payable by the said G. whilst she was sole and unmarried (*c*), for goods sold and delivered [*or* "bargained and sold"] by the plaintiff to the said G.

And for work done and materials provided by the plaintiff for the said G. at her request.

And for money lent by the plaintiff to the said G.

And for money paid by the plaintiff for the use of the said G. at her request.

And for money received by the said G. for the use of the plaintiff.

And for money found to be due from the said G. to the plaintiff on accounts stated between them.

[*Conclusion, ante*, 20.]

---

5. By an Executor or Administrator (*d*).

[*Commencement, ante*, 20 *or* 21.]

For money payable by the defendant to the said G. H. (*c*) for goods sold and delivered [*or* "bargained and sold"] by the said G. H. to the defendant.

And for work done and materials provided by the said G. H. for the defendant at his request.

And for money lent by the said G. H. to the defendant.

And for money paid by the said G. H. for the use of the defendant at his request.

And for money received by the defendant for the use of the said G. H.

And for money found to be due from the defendant to the said G. H. on accounts stated between them.

[*Conclusion, ante*, 20 *or* 21.]

(*c*) The words "money payable," &c., should only be inserted in the first of the common counts.

(*d*) This form will be applicable to an action at the suit of a surviving executor or administrator, at the suit of husband and wife, the wife being executrix or administratrix, and at the suit of an administrator *de bonis non*.

6. Against an Executor or Administrator (*e*).

[*Commencement, ante*, 21.]

For money payable by the said G. H. to the plaintiff (*f*) for goods sold and delivered [*or* "bargained and sold"] by the plaintiff to the said G. H.

And for work done and materials provided by the plaintiff for the said G. H. at his request.

And for money lent by the plaintiff to the said G. H.

And for money paid by the plaintiff for the use of the said G. H. at his request.

And for money received by the said G. H. for the use of the plaintiff.

And for money found to be due from the said G. H. to the plaintiff on accounts stated between them.

[*Conclusion, ante*, 21 *or* 22.]

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7. By an Executor or Administrator against an Executor or Administrator.

[*Commencement, ante*, 22.]

For money payable by the said L. M. to the said G. H. (*f*) for goods sold and delivered [*or* "bargained and sold"] by the said G. H. to the said L. M.

And for work done and materials provided by the said G. H. for the said L. M. at his request.

And for money lent by the said G. H. to the said L. M.

And for money paid by the said G. H. for the use of the said L. M. at his request.

And for money received by the said L. M. for the use of the said G. H.

And for money found to be due from the said L. M. to the said G. H. on accounts stated between them.

[*Conclusion, ante*, 22.]

(*e*) This form will be applicable to an action against a surviving executor or administrator, against husband and wife, the wife being executrix or administratrix, and against an administrator *de bonis non*.

(*f*) The words "money payable," &c., should only be inserted in the first of the common counts

8. By the Assignees of a Bankrupt.

[*Commencement, ante*, 26.]

For money payable by the defendant to the said G. H. (*g*) before he became bankrupt for goods sold and delivered [*or* "bargained and sold"] by the said G. H. to the defendant.

And for work done and materials provided by the said G. H. for the defendant at his request.

And for money lent by the said G. H. to the defendant.

And for money paid by the said G. H. for the use of the defendant at his request.

And for money received by the defendant for the use of the said G. H.

And for money found to be due from the defendant to the said G. H. on accounts stated between them.

[*Conclusion, ante*, 26.]

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9. By the Assignee of an Insolvent Debtor.

[*Commencement, ante*, 26.]

For money payable by the defendant to the said G. H. (*g*), before he became such insolvent debtor as aforesaid, for goods sold and delivered [*or* "bargained and sold"] by the said G. H. to the defendant at his request.

And for work done and materials provided by the said G. H. for the defendant at his request.

And for money lent by the said G. H. to the defendant.

And for money paid by the said G. H. for the use of the defendant at his request.

And for money received by the defendant for the use of the said G. H.

And for money found to be due from the defendant to the said G. H. on accounts stated between them.

[*Conclusion, ante*, 27.]

(*g*) The words "money payable," &c, should only be inserted in the first of the common counts.

SECTION III.

COUNTS ON PROMISSORY NOTES.

PAYEE *v.* MAKER.

1. Payee *v.* Maker of a Note payable generally.

[*Commencement, ante,* 15.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*] by his promissory note now overdue, promised to pay to the plaintiff £ , days ["weeks" *or* "months"] after date, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante,* 15].

2. The like, payable at a particular Place (*a*).

[*Commencement, ante,* 15.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the plaintiff at [*as in the note*] £ , days ["weeks" *or* "months"] after the date thereof, and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante,* 15].

(*a*) If a note in the body of it be made payable at a particular place, the place of payment forms a material part of the instrument, and a presentment at that place should be alleged; but otherwise no presentment is necessary to charge the maker, *Williams* v. *Waring,* 10 B. & C. 2.

3. Surviving Payee *v.* Maker of a Note.

[*Commencement, ante,* 16.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*] by his promissory note, now overdue, promised to pay to the plaintiff and the said G. H. £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante,* 17.]

---

4. Payee *v.* Surviving Maker of a Note.

[*Commencement, ante,* 18.]

For that the defendant and the said G. H., on the day of , in the year of our Lord 18 [*date of the note*] by their promissory note, now overdue, promised to pay to the plaintiff £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante,* 19.]

---

5. Husband and Wife on Note payable to Wife before Marriage *v.* Maker of a Note.

[*Commencement, ante,* 19.]

For that the defendant on the day of in the year of our Lord 18 [*date of note*], and whilst the said C. was sole and unmarried, by his promissory note, now overdue, promised to pay to the said C. £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante,* 20.]

---

6. Payee *v.* Husband and Wife on Note made by the Wife before Marriage.

[*Commencement, ante,* 20.]

For that the said C. on the day of in the year of our Lord 18 [*date of the note*], and whilst she was

sole and unmarried, by her promissory note, now overdue, promised to pay to the plaintiff £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante*, 20].

---

7. Executor or Administrator of Payee *v.* Maker of a Note.

[*Commencement, ante*, 20 *or* 21.]

For that the defendant on the day of , in the year of our Lord 18 [*date of note*], by his promissory note, now overdue, promised to pay to the said G. H. £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante*, 20 *or* 21].

---

8. Payee *v.* Executor or Administrator of Maker of a Note.

[*Commencement, ante*, 21.]

For that the said G. H., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the plaintiff £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante*, 21 *or* 22].

---

9. Executor or Administrator of Payee *v.* Executor or Administrator of Maker of a Note.

[*Commencement, ante*, 22.]

For that the said L. M. on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the said G. H. £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante*, 22].

10. Assignees of Payee, a Bankrupt, *v.* Maker of a Note.

[*Commencement, ante,* 26.]

For that the defendant on the day of , in the year of our Lord 18 [*date of note*], and before the said G. H. became bankrupt, by his promissory note, now overdue, promised to pay to the said G. H. £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante,* 26.]

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11. By Assignee of Payee, an Insolvent Debtor, *v.* Maker of a Note.

[*Commencement, ante,* 26.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*], and before the said G. H. became such insolvent debtor as aforesaid, by his promissory note, now overdue, promised to pay to the said G. H. £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante,* 27.]

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12. By Public Officer of a Banking Company *v.* Maker of a Note.

[*Commencement, ante,* 29.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the said copartnership £ , days ["weeks" *or* "months"] after the date thereof, but did not pay the same: And also for money payable, &c. [*state the consideration, and conclude as ante,* 29].

INDORSEE *v.* MAKER.

1. Indorsee *v.* Maker of a Note payable generally.

[*Commencement, ante,* 15.]

For that the defendant on the day of , in the year of our Lord 18 [*date of note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. indorsed the same to the plaintiff (*a*), but the defendant did not pay the same.

[*Conclude as ante,* 15.]

2. The like, payable at a particular Place.

[*Commencement, ante,* 15.]

For that the defendant on the day of , in the year of our Lord, 18 [*date of the note*], by his promissory note, now overdue, promised to pay to A. B. or order, at [*as in the note*], £ , days ["weeks" *or* "months"] after date, and the said A. B. indorsed the same to the plaintiff (*a*): And the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 15.]

3. Surviving Indorsee *v.* Maker of a Note.

[*Commencement, ante,* 16.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date,

(*a*) If the plaintiff be the second, or any subsequent indorsee, the intermediate indorsement or indorsements may be stated as follows: "And the said A. B. indorsed the same to X. Y., and the said X. Y. indorsed the same to the plaintiff."

and the said A. B. indorsed the same to the plaintiff and the said G. H., but the defendant did not pay the same.

[*Conclude as ante*, 17.]

---

4. Indorsee *v.* Surviving Maker of a Note.

[*Commencement, ante*, 18.]

For that the defendant and the said G. H. on the day of , in the year of our Lord [*date of the note*], by their promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. indorsed the same to the plaintiff (*b*), but the defendant and the said G. H. did not, nor did either of them, pay the same.

[*Conclude as ante*, 19.]

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5. By Husband and Wife on Note indorsed to Wife before Marriage *v.* Maker of a Note.

[*Commencement, ante*, 19.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. whilst the said C. was sole and unmarried, indorsed the same to the said C. (*b*), but the defendant did not pay the same.

[*Conclude as ante*, 20.]

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6. Indorsee *v.* Husband and Wife on Note made by Wife before Marriage.

[*Commencement, ante*, 20.]

For that the said G. on the day of , in the year of our Lord 18 [*date of the note*], and whilst she was sole and unmarried, by her promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. in-

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(*b*) See note (*a*), *ante*, p. 52.

dorsed the same to the plaintiff(*c*), but the defendants did not nor did either of them pay the same.

[*Conclude as ante*, 20].

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7. Executor or Administrator of Indorsee *v.* Maker of a Note.

[*Commncement, ante*, 20 *or* 21.]

For that the defendant, on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. indorsed the same to the said G. H.(*c*), but the defendant did not pay the same.

[*Conclude as ante*, 20 *or* 21].

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8. Indorsee *v.* Executor or Administrator of Maker of a Note.

[*Commencement, ante*, 21.]

For that the said G. H. on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. indorsed the same to the plaintiff(*c*), but the said G. H. did not pay the same.

[*Conclude as ante*, 21 *or* 22].

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9. Executor or Administrator of Indorsee *v.* Executor or Administrator of Maker of a Note.

[*Commencement, ante*, 22.]

For that the said L. M. on the day of , in the year of our Lord 18 [*date of note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. indorsed the same to the said G. H.(*c*), but the said L. M. did not pay the same.

[*Conclude as ante*, 22].

(*c*) See note (*a*), *ante*, p. 52.

10. Assignees of Indorsee, a Bankrupt, *v.* Maker of a Note.

[*Commencement, ante,* 26.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. before the said G. H. became bankrupt, indorsed the same to the said G. H. (*d*), but the defendant did not pay the same.

[*Conclude as ante,* 26].

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11. Assignee of Indorsee, an Insolvent Debtor, *v.* Maker of a Note.

[*Commencement, ante,* 26.]

For that the defendant on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B., before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H. (*d*), but the defendant did not pay the same.

[*Conclude as ante,* 27].

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12. Public Officer of Banking Company, Indorsees, *v.* Maker of a Note.

[*Commencement, ante,* 29.]

For that the defendant on the day of , in the year of our Lord 18 [*date of note*], by his promissory note, now overdue, promised to pay to A. B. or order £ , days ["weeks" *or* "months"] after date, and the said A. B. indorsed the same to the said copartnership(*d*), but the defendant did not pay the same.

[*Conclude as ante,* 29].

(*d*) See note (*a*), *ante,* p. 52.

INDORSEE *v.* PAYEE.

1. Indorsee *v.* Payee of a Note.

[*Commencement, ante,* 15.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the defendant or order £ , days ["weeks" *or* "months"] after date, and the defendant indorsed the same to the plaintiff [*or* "and the defendant indorsed the same to X. Y., and the said X. Y. indorsed the same to the plaintiff"] and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 15.]

2. Surviving Indorsee *v.* Payee of a Note.

[*Commencement, ante,* 16.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*] by his promissory note, now overdue, promised to pay to the defendant or order £ , days ["weeks" *or* "months"] after date, and the defendant indorsed the same to the plaintiff and the said G. H., since deceased [*or* "and the defendant indorsed the same to one X. Y., and the said X. Y. indorsed the same to the plaintiff and the said G. H., since deceased"], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 17].

3. Indorsee *v.* Surviving Payee of a Note.

[*Commencement as ante,* 18.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note,

(*a*) If the defendant indorsed the note immediately to the plaintiff, that is, if there be no intermediate indorsement, add a count on the consideration and an account stated.

now overdue, promised to pay the defendant and the said G. H. or order £ , days ["weeks" *or* "months"] after the date, and the defendant and the said G. H. indorsed the same to the plaintiff [*or* "and the defendant and the said G. H. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the plaintiff"], and the said note was duly presented for payment and was dishonoured, whereof the defendant and the said G. H. had due notice, but did not pay the same (*b*).

[*Conclude as ante*, 19.]

---

4. Husband and Wife on Note indorsed to the Wife before Marriage *v.* Payee of a Note.

[*Commencement, ante*, 19.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay the defendant or order £ , days ["weeks" *or* "months"] after date, and the defendant, while the said C. was sole and unmarried, indorsed the same to the said C. [*or* "and the defendant indorsed the same to one X. Y., and the said X. Y., whilst the said C. was sole and unmarried, indorsed the same to the said C."], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*b*).

[*Conclude as ante*, 20.]

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5. Indorsee *v.* Husband and Wife on Note to the Wife before Marriage, and indorsed by her.

[*Commencement, ante*, 20.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], and whilst the said C. was sole and unmarried, by his promissory note, now overdue, promised to pay the said C. or order £ , days ["weeks" *or* "months"] after date, and the said C., whilst she was sole and unmarried, indorsed the same to the plain-

(*b*) See note (*a*), *ante*, p. 56.

tiff [*or* "and the said C., whilst she was sole and unmarried, indorsed the same to one X. Y., and the said X. Y. indorsed the same to the plaintiff"], and the said note was duly presented for payment and was dishonoured, whereof the said C. had due notice, but did not pay the same (*c*).

[*Conclude as ante*, 20.]

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6. Executor or Administrator of Indorsee *v.* Payee of a Note.

[*Commencement*, *ante*, 20 *or* 21.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the defendant or order £ , days ["weeks" *or* "months"] after date, and the defendant, in the lifetime of the said G. H., indorsed the same to the said G. H. [*or* "and the defendant indorsed the same to one X. Y., and the said X. Y., in the lifetime of the said G. H., indorsed the same to the said G. H."], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*c*).

[*Conclude as ante*, 20 *or* 21.]

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7. Indorsee *v.* Executor or Administrator of Payee of a Note.

[*Commencement*, *ante*, 21.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay the said G. H. or order £ , days ["weeks" *or* "months"] after date, and the said G. H. indorsed the same to the plaintiff [*or* "and the said G. H. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the plaintiff"], and the said note was duly presented for payment and was dishonoured, whereof the said G. H. had due notice, but did not pay the same (*c*).

[*Conclude as ante*, 21 *or* 22.]

(*c*) See note (*a*), *ante*, p. 56.

8. Executor or Administrator of Indorsee *v.* Executor or Administrator of Payee of a Note.

[*Commencement, ante*, 22.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay the said L. M. or order £ , days ["weeks" *or* "months"] after date, and the said L. M. indorsed the same to the said G. H. [*or* "and the said L. M. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the said G. H."], and the said note was duly presented for payment and was dishonoured, whereof the said L. M. had due notice, but did not pay the same (*d*).

[*Conclude as ante*, 22.]

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9. Assignees of Indorsee, a Bankrupt, *v.* Payee of a Note.

[*Commencement, ante*, 26.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay the defendant or order £ , days ["weeks" *or* "months"] after date, and the defendant, before the said G. H. became bankrupt, indorsed the same to the said G. H. [*or* "and the defendant indorsed the same to one X. Y., and the said X. Y., before the said G. H. became bankrupt, indorsed the same to the said G. H."], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*d*).

[*Conclude as ante*, 26.]

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10. Assignee of Indorsee, an Insolvent Debtor, *v.* Payee of a Note.

[*Commencement, ante*, 26.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory

(*d*) See note (*a*), *ante*, p. 56.

note, now overdue, promised to pay the defendant or order £ , days ["weeks" *or* "months"] after date, and the defendant, before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H. [*or* "and the defendant indorsed the same to one X. Y., and the said X. Y., before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H."], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*e*).

[*Conclude as ante*, 27.]

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11. Public Officer of a Banking Company *v.* Payee.

[*Commencement, ante*, 29.]

For that one A. B., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the defendant or order £ , days ["weeks" *or* "months"] after date, and the defendant indorsed the same to the said copartnership [*or* "and the defendant indorsed the same to X. Y., and the said X. Y. indorsed the same to the said copartnership"], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*e*).

[*Conclude as ante*, 29.]

INDORSEE *v.* INDORSER, NOT BEING PAYEE.

1. Indorsee *v.* Indorser, not being Payee.

[*Commencement, ante*, 15.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay one X. Y. or order

(*e*) See note (*a*), *ante*, p. 56.

£ , days ["weeks" *or* "months"] after date, and the said X. Y. indorsed the same to the defendant, and the defendant indorsed the same to the plaintiff [*or* "and the defendant indorsed the same to Q. R., and the said Q. R. indorsed the same to the plaintiff"], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*f*).

[*Conclude as ante*, 15.]

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2. Surviving Indorsee *v.* Indorser, not being Payee.

[*Commencement*, *ante*, 16.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*] by his promissory note, now overdue, promised to pay to one X. Y. or order £ , days ["weeks" *or* "months"] after date, and the said X. Y. indorsed the same to the defendant, and the defendant indorsed the same to the plaintiff and the said G. H., since deceased [*or* "and the defendant then indorsed the same to one Q. R., and the said Q. R. indorsed the same to the plaintiff and the said G. H., since deceased"], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*f*).

[*Conclude as ante*, 17.]

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3. Indorsee *v.* Surviving Indorser, not being Payee.

[*Commencement*, *ante*, 18.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to one X. Y. or order £ , days ["weeks" *or* "months"] after date, and the said X. Y. indorsed the same to the defendant and the said G. H., since deceased, and the defendant and the said G. H., since deceased, indorsed the same to the plaintiff [*or* "and the defendant and the said G. H., since deceased,

(*f*) See note (*a*), *ante*, p. 56.

indorsed the same to one Q. R., and the said Q. R. indorsed the same to the plaintiff"], and the said note was duly presented for payment and was dishonoured, whereof the defendant and the said G. H. had due notice, but did not pay the same (*g*).

[*Conclude as ante*, 19.]

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4. Husband and Wife on Note indorsed to the Wife before Marriage *v.* Indorser, not being Payee.

[*Commencement, ante*, 19.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to one X. Y. or order £ , days ["weeks" *or* "months"] after date, and the said X. Y. indorsed the same to the defendant, and the defendant, whilst the said C. was sole and unmarried, indorsed the same to the said C, [*or* "and the defendant indorsed the same to one Q. R., and the said Q. R., whilst the said C. was sole and unmarried, indorsed the same to the said C."], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*g*).

[*Conclude as ante*, 20.]

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5. Indorsee *v.* Husband and Wife, on a Note indorsed to the Wife before Marriage, and by the Wife indorsed over.

[*Commencement, ante*, 20.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to X. Y. or order £ , days ["weeks" *or* "months"] after date, and the said X. Y. indorsed the same to the said C. whilst she was sole and unmarried, and the said C. whilst she was sole and unmarried indorsed the same to the plaintiff [*or* "and the said C. whilst she was sole and unmarried indorsed the same to one Q. R., and the said Q. R. indorsed

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(*g*) See note (*a*), *ante*, p. 56.

the same to the plaintiff"], and the said note was duly presented for payment and was dishonoured, whereof the said C. had due notice, but did not pay the same (*h*).

[*Conclude as ante*, 20.]

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6. Executor or Administrator of Indorsee *v.* Indorser, not being Payee.

[*Commencement, ante*, 20 *or* 21.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to one X. Y. or order £ , days ["weeks" *or* "months"] after date; and the said X. Y. indorsed the same to the defendant, and the defendant indorsed the same to the said G. H. in his lifetime, [*or*, "and the defendant indorsed the same to one Q. R., and the said Q. R. indorsed the same to the said G. H. in his lifetime"], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*h*).

[*Conclude as ante*, 20 *or* 21.]

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7. Indorsee *v.* Executor or Administrator of Indorser, not being Payee.

[*Commencement, ante*, 21.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to one X. Y. or order £ , days ["weeks" *or* "months"] after date; and the said X. Y., in the lifetime of the said G. H., indorsed the same to the said G. H., and the said G. H. indorsed the same to the plaintiff [*or*, "and the said G. H. indorsed the same to one Q. R., and the said Q. R. indorsed the same to the plaintiff"], and the said note was duly presented for payment and was dishonoured, whereof the said G. H. had due notice, but did not pay the same (*h*).

[*Conclude as ante*, 21 *or* 22.]

(*h*) See note (*a*), *ante*, p. 56.

8. Executor or Administrator of Indorsee *v.* Executor or Administrator of Indorser, not being Payee.

[*Commencement, ante*, 22.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to one X. Y. or order £ , days ["weeks" *or* "months"] after date; and the said X. Y. indorsed the same to the said L. M., since deceased, and the said L. M. indorsed the same to the said G. H., since deceased, [*or*, "and the said L. M., since deceased, indorsed the same to one Q. R., and the said Q. R. indorsed the same to the said G. H., since deceased"], and the said note was duly presented for payment and was dishonoured, whereof the said L. M. had due notice, but did not pay the same (*i*).

[*Conclude as ante*, 22.]

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9. Assignees of Indorsee, a Bankrupt, *v.* Indorser, not being Payee.

[*Commencement, ante*, 26.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to one X. Y. or order £ , days ["weeks" *or* "months"] after date; and the said X. Y. indorsed the same to the defendant, and the defendant, before the said G. H. became bankrupt as aforesaid, indorsed the same to the said G. H. [*or*, "and the defendant indorsed the same to one Q. R., and the said Q. R., before the said G. H. became bankrupt, indorsed the same to the said G. H."], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*i*).

[*Conclude as ante*, 26.]

(*i*) See note (*a*), *ante*, p. 56.

10. Assignee of Indorsee, an Insolvent Debtor, *v.* Indorser, not being Payee.

[*Commencement, ante,* 26.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to one X. Y. or order £ , days ["weeks" *or* "months"] after date, and the said X. Y., before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H. [*or*, "and the said X. Y. indorsed the same to one Q. R., and the said Q. R., before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H."], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*k*).

[*Conclude as ante,* 27.]

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11. Public Officer of a Banking Company *v.* Indorser, not being Payee.

[*Commencement, ante,* 29.]

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay one X. Y. or order £ , days ["weeks" *or* "months"] after date, and the said X. Y. indorsed the same to the defendant, who then indorsed the same to the said copartnership [*or*, "and the defendant indorsed the same to Q. R., who indorsed the same to the said copartnership"], and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same(*k*).

[*Conclude as ante,* 29.]

(*k*) See note (*a*), *ante,* p. 56.

SECTION IV.

COUNTS ON VARIOUS PROMISSORY NOTES NOT INCLUDED IN THE PREVIOUS SECTION.

1. On a Promissory Note for less than £5 (*a*).

For that the defendant, on the day of , in the year of our Lord 18 [*date of the note*] at [*the*

(*a*) By 17 Geo. 3, c. 30, s. 1, made perpetual by 27 Geo. 3, c. 16, it is enacted, that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, *being negotiable or transferable*, for the payment of twenty shillings, or any sum of money above that sum, and less than £5, *or on which twenty shillings, or above that sum, and less than £5, shall remain undischarged*, and which *shall be issued* within that part of Great Britain called England, at any time after the 1st day of January, 1778, shall specify the names and places of abode of the persons respectively to whom, or to whose order, the same shall be made payable, and shall bear date before or at the time of drawing or issuing thereof, and not on any day subsequent thereto, and shall be made payable within the space of twenty-one days next after the day of the date thereof, and shall not be transferable or negotiable after the time thereby limited for payment thereof; and that every indorsement to be made thereon shall be made before the expiration of that time, and bear date at or not before the time of making thereof; and shall specify the name and place of abode of the person or persons to whom, or to whose order, the money contained in every such note, bill, draft, or undertaking, is to be paid; and that the signing of every such note, bill, draft, or undertaking, and also of every such indorsement, shall be attested by one subscribing witness at the least; and which said notes, bills of exchange, or drafts, or undertakings in writing, may be made or drawn in words to the purport or effect as set out in the schedule hereunto annexed, Nos. 1 and 2.

No. 1.

[*Place*] [*Day*] [*Month*] [*Year.*]

Twenty-one days after date I promise to pay to A. B., of [*place*] or his order, the sum of for value received by C. D.

Witness, E. F.

And the Indorsement to the quoties.

Pay the contents to G. H. of [*place*] or his order.

Witness, I. K. A. B.

place mentioned in the note], according to the form of the statute in such case made and provided, by his promissory note in writing, now overdue, and signed by the defendant in the presence of one A. B. [*the name of the attesting witness*], who then duly attested such signature, and subscribed his name as a witnes thereto, promised to pay the plaintiff, by the name and description of , of (being the name and then place of abode of the plaintiff to whom the money in the said note specified was to be paid), or order, £ , days after date, but did not pay the same.

[*Conclude as ante*, 15.]

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2. On a Note payable after Sight.

For that the defendant, on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the plaintiff £ , days ["weeks" *or* "months"] after sight thereof, but did not pay the same.

[*Conclude as ante*, 15.]

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3. On a Note payable by Instalments, where the whole became due upon one Default.

For that the defendant, on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note promised to pay to the plaintiff £ by the instalments following; (that is to say) £ on the day of then next, £ on the

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No. 2.

[*Place*] [*Day*] [*Month*] [*Year.*]

Twenty-one days after date pay to A. B. of [*place*] or his order, the sum of value received, as advised by C.D.

To E. F. of [*place*].

Witness, G. H.

And the Indorsement toties quoties.

[*Day*] [*Month*] [*Year.*]

Pay the contents to I. H. of [*place*] or his order.

Witness, L.M. A.B.

day of then next, and the remaining £ on the day of then next, and that in case default should be made in payment of any or either of the said instalments the whole of the said sum of £ , or so much thereof as should be remaining unpaid at the time of making such default, should become due and payable; and the plaintiff avers that on the day of , in the year of our Lord (*b*), default was made by the defendant in payment of the first [*or* "second," &c., *as the case may be*] of the said instalments, and that at the time of such default there remained due on the said note the sum of £ , but the defendant hath not paid the same.

[*Conclude as ante*, 15.]

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4. The like, where all Instalments are due by Lapse of Time.

For that the defendant, on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the plaintiff £ by the instalments following, (that is to say) £ on the day of then next, £ on the day of then next, and the remaining £ on the day of then next, but did not pay the same.

[*Conclude as ante*, 15.]

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5. The like, for one Instalment on a Note payable by Instalments, where whole not due on one Default.

For that the defendant, on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note promised to pay to the plaintiff £ by the instalments following, (that is to say) £ on

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(*b*) The maker is entitled to the three days of grace, upon the falling due of *each instalment*; see Oridge *v.* Sherborne, 11 M. & W. 374.

the day of then next, £ on the day of then next, and the remaining £ on the day of then next; and the plaintiff avers that afterwards, on the day of , in the year of our Lord 18 (*c*), the first [*or* "second," *as the case may be*] of the said instalments became due from the defendant to the plaintiff, but he did not pay the same.

[*Conclude as ante*, 15.]

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6. On a Note payable on Demand (*d*).

For that the defendant, on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note promised to pay to the plaintiff £ on demand, but hath not paid the same.

[*Conclude as ante*, 15.]

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7. The like, after Demand.

For that the defendant, on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note promised to pay the plaintiff £ , days ["weeks" *or* "months"] after demand, and the plaintiff avers that afterwards, to wit, on the day and year aforesaid, the said sum was duly demanded by him of the defendant, and that the days ["weeks" *or* "months"] from the time of such demand had elapsed before the commencement of this suit.

[*Conclude as ante*, 15.]

(*c*) See note (*a*), *ante*, 68.

(*d*) If a note be payable *on demand*, no demand need be made previous to the commencement of the action; Rumball *v.* Ball, 10 Mod. 38. But if *after demand*, a demand must be made before the commencement of the action, Thorpe *v.* Booth, R. & M. 388. Although no demand is necessary previous to the commencement of an action on a note payable on demand, yet it is advisable that such demand should be made, in order that the plaintiff may recover interest on the note, since, in the case of Pierce *v.* Fothergill, 2 Bing. N. C. 167, it was decided, that in an action on a promissory note of this kind, where there is no proof of any agreement for interest, the plaintiff is only entitled to interest from the day of issuing the writ of summons, that being considered as the time when the demand was made.

8. Indorsee *v.* Payee of a Promissory Note, averring that Maker had no Effects, to dispense with Notice of Nonpayment (*e*).

For that one C. D., on the day of , in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay to the order of the defendant £ , days ["weeks" *or* "months"] after date, and the defendant indorsed the same to the plaintiff; and the said note was duly presented for payment, and was dishonoured; and the plaintiff avers that at the time of making the said note, and from thence until at the end of the day on which the same became due and payable according to the tenor and effect thereof, the defendant had not in the hands of the said C. D. any effects of the defendant, nor had the said C. D. any consideration for the payment by the said C. D. of the said note, or any part thereof, nor had the defendant at the time of the making of the note as aforesaid, nor from thence until and at the end of the day when the same became due and payable, according to the tenor and effect thereof, any reasonable grounds to expect that the said C. D. would have any such effects, or that the said C. D., or any other person or persons whatsoever, would pay the said money in the said note specified, or any part thereof, upon the presentment of the said note for payment, nor hath the defendant sustained any damage by reason of his not having had notice of the nonpayment of the said note; but the defendant hath not paid the same.

[*Conclude as ante*, 15.]

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9. By the Bearer of a Note payable to C. D. or Bearer.

For that the defendant, on the day of ,

(*e*) See form, 6 A. & E. 502, and Kemble *v.* Mills, 1 M. & Gr. 757.

in the year of our Lord 18 [*date of the note*], by his promissory note, now overdue, promised to pay C. D. or bearer £ , days ["weeks" *or* "months"] after date, and the said C. D. delivered the said note to the plaintiff, but the defendant did not pay the same.

[*Conclude as ante*, 15.]

SECTION V.

COUNTS ON BILLS OF EXCHANGE.

DRAWER, BEING ALSO PAYEE, *v.* ACCEPTOR.

1. Drawer, being also Payee, *v.* Acceptor of a Bill accepted generally.

[*Commencement, ante,* 15.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff £ , days ["weeks" *or* "months"] after date, and the defendant accepted the said bill, but did not pay the same [*add a count on the consideration.*]

[*Conclude as ante,* 15.]

2. The like, payable at a particular Place only, and not otherwise or elsewhere (*a*).

[*Commencement, ante,* 15.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of ex-

(*a*) This is a special acceptance according to 1 & 2 Geo. 4, c. 78, s. 1. If the words "and not otherwise or elsewhere" are not inserted in the acceptance, no presentment is necessary to charge the acceptor, and the first form should be used. A bill of exchange drawn generally on a party may be accepted in three different forms, either generally, or payable at a particular banker's, or payable at a particular banker's and not elsewhere. If the drawee accepts generally, he undertakes to pay the bill at maturity, when presented to him for payment. If he accepts payable at a banker's, he undertakes (since the statute) to pay the bill at maturity when presented for payment either to himself or at the banker's. If he accepts payable at a banker's and not elsewhere, he contracts to pay the bill at maturity, provided it is presented at the banker's, but not otherwise; Halstead *v.* Skelton, 5 Q. B. 93.

change now overdue, directed to the defendant, required the defendant to pay to the plaintiff £ , days ["weeks" *or* "months"] after date, and the defendant accepted the said bill payable at [*as in the bill*] only, and not otherwise or elsewhere, and the said bill was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 15.]

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3. Surviving Drawer, being also Payee, *v.* Acceptor of a Bill accepted generally.

[*Commencement, ante*, 16.]

For that the plaintiff and the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], by their bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff and the said G. H., since deceased, £ , days ["weeks" *or* "months"] after date, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 17.]

---

4. Drawer, being also Payee, *v.* Surviving Acceptor.

[*Commencement, ante*, 18.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant and the said G. H., since deceased, required the defendant and the said G. H. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date, and the defendant and the said G. H., since deceased, accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 19.]

(*a*) A count on the consideration and on an account stated may be added.

5. Husband and Wife, on Bill drawn by and made payable to the Wife before Marriage, *v.* Acceptor.

[*Commencement, ante,* 19.]

For that the said C., on the day of , in the year of our Lord 18 [*date of the bill*], and whilst she was sole and unmarried, by her bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said C. £ , days ["weeks" *or* "months"] after date, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante,* 20.]

---

6. Drawer, being also Payee, *v.* Husband and Wife, on a Bill accepted by the Wife before Marriage.

[*Commencement, ante,* 20.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said G., whilst she was sole and unmarried, required the said G. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date, and the said G., whilst she was sole and unmarried, accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante,* 20.]

---

7. Executor or Administrator of Drawer, being Payee, *v.* Acceptor.

[*Commencement, ante,* 20 *or* 21.]

For that the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said G. H. £ , days ["weeks" *or* "months"] after date, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante,* 21.]

(*a*) A count on the consideration and on an account stated may be added.

8. Drawer, being also Payee, *v.* Executor or Administrator of Acceptor.

[*Commencement, ante*, 21.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said G. H., required the said G. H. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date, and the said G. H., since deceased, accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 21 *or* 22.]

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9. Executor or Administrator of Drawer, being Payee, *v.* Executor or Administrator of Acceptor.

[*Commencement, ante*, 22.]

For that the said G. H. in his lifetime, and in the lifetime of the said L. M., to wit, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said L. M., required the said L. M. to pay to the said G. H. £ , days ["weeks" *or* "months"] after date, and the said L. M. accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 22.]

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10. Assignees of Drawer, being also Payee, a Bankrupt, *v.* Acceptor.

[*Commencement, ante*, 26.]

For that the said G. H., before he became bankrupt, to wit, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said G. H. £ , days ["weeks" or "months"] after date, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 26.]

(*a*) A count on the consideration and on an account stated may be added.

11. Assignee of Drawer, being also Payee, an Insolvent Debtor, *v.* Acceptor.

[*Commencement, ante*, 26.]

For that the said G. H., before he became such insolvent debtor as aforesaid, to wit, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said G. H. £ , days ["weeks" *or* "months"] after date, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 27.]

---

12. By the Public Officer of a Banking Company, on a Bill drawn by the Company, *v.* Acceptor.

[*Commencement, ante*, 29.]

For that the said copartnership, on the day of , in the year of our Lord 18 [*date of the bill*], by their bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said copartnership £ , days ["weeks" *or* "months"] after date, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 29.]

DRAWER, NOT BEING PAYEE, *v.* ACCEPTOR.

1. Drawer, not being Payee, *v.* Acceptor of a Bill accepted generally.

[*Commencement, ante*, 15.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the plaintiff,

(*a*) A count on the consideration and on an account stated may be added.

of all which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 15.]

---

2. The like, accepted payable at a particular Place, and not otherwise or elsewhere (*b*).

[*Commencement, ante*, 15.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill payable at [*as in the bill*] only, and not otherwise or elsewhere, and the said bill was duly presented for payment, and was dishonoured, and thereupon the same was then returned to the plaintiff, of all which the defendant had due notice, but did not pay the same (*b*).

[*Conclude as ante*, 15.]

---

3. Surviving Drawer, not being Payee, *v.* Acceptor of a Bill.

[*Commencement, ante*, 16.]

For that the plaintiff and the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], by their bill of exchange, now overdue, directed to the defendant, required the defendant to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the plaintiff and the said G. H. in his lifetime [*or* "to the plaintiff"], of all which the defendant had due notice, but did not pay the same (*b*).

[*Conclude as ante*, 17.]

(*a*) A count on the consideration and on an account stated may be added.

(*b*) See note (*a*), *ante*, 72.

4. Drawer, not being Payee, *v.* Surviving Acceptor of a Bill.

[*Commencement, ante,* 18.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant and the said G. H., since deceased, required the defendant and the said G. H. to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant and the said G. H., since deceased, accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the plaintiff, of all which the defendant and the said G. H. in his lifetime had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 19.]

---

5. Husband and Wife, on a Bill drawn by the Wife before Marriage (she not being the Payee) *v.* Acceptor of a Bill.

[*Commencement, ante,* 19.]

For that the said C., on the day of , in the year of our Lord 18 [*date of the bill*], and whilst she was sole and unmarried, by her bill of exchange, now overdue, directed to the defendant, required the defendant to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the said C. whilst sole and unmarried, of all which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 20.]

(*a*) A count on the consideration and on an account stated may be added.

6. Drawer, not being Payee, *v.* Husband and Wife, on Bill accepted by the Wife before Marriage.

[*Commencement, ante*, 20.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said G. whilst she was sole and unmarried, required the said G. to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said G. then and whilst she was sole and unmarried accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the plaintiff, of all which the said G. then had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 20.]

---

7. Executor or Administrator of Drawer, not being Payee, *v.* Acceptor of a Bill.

[*Commencement, ante*, 20 *or* 21.]

For that the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the said G. H., since deceased [*or* "to the plaintiff as such executor" *or* "administrator" "as aforesaid," *according to the fact*], of all which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 20 *or* 21.]

(*a*) A count on the consideration and on an account stated may be added.

8. Drawer, not being Payee, *v.* Executor or Administrator of Acceptor of a Bill.

[*Commencement, ante*, 21.]

For that the plaintiff, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said G. H. in his lifetime, required the said G. H. to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said G. H. accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the plaintiff, of all which the said G. H., since deceased, had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 21 *or* 22.]

---

9. Executor or Administrator of Drawer, not being Payee, *v.* Executor or Administrator of Acceptor of a Bill.

[*Commencement, ante* 22.]

For that the said G. H. heretofore in his lifetime, and in the lifetime of the said L. M., since deceased, to wit, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said L. M., required the said L. M. to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said L. M. then accepted the same, and the said bill was duly presented for payment, and was dishonoured, and thereupon the same was then returned to the said G. H., since deceased, of all which the said L. M., since deceased, had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 22.]

(*a*) A count on the consideration and on an account stated may be added.

10. Assignees of Drawer, not being Payee, a Bankrupt, *v.* Acceptor of a Bill.

[*Commencement, ante*, 26.]

For that the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], and before he became bankrupt, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the said G. H. before he became bankrupt [*or if returned to the plaintiffs,* "returned to the plaintiffs as assignees as aforesaid"], of all which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 26.]

---

11. Assignee of Drawer, not being Payee, an Insolvent Debtor, *v.* Acceptor of a Bill.

[*Commencement, ante*, 26.]

For that the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], and before he became such insolvent debtor as aforesaid, by his bill of exchange now overdue, directed to the defendant, required the defendant to pay to O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the said G. H. [*or* "to the plaintiff, assignee as aforesaid"], of all which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 27.]

(*a*) A count on the consideration and on an account stated may be added.

12. By the Public Officer of a Banking Company Drawees, not being Payees, *v.* Acceptor.

[*Commencement, ante*, 29.]

For that the said copartnership, on the day of , in the year of our Lord 18 [*date of the bill*], by their bill of exchange, now overdue, directed to the defendant, required the defendant to pay O. P. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant then accepted the same, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was then returned to the said copartnership, of all which the defendant had due notice, but did not pay the same.

[*Conclude as ante*, 29.]

INDORSEE *v.* ACCEPTOR.

1. Indorsee *v.* Acceptor of a Bill accepted generally.

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, and the said E. F. indorsed the same to the plaintiff [*or*, "and the said E. F. indorsed the same to K. J., and the said K. J. indorsed the same to the plaintiff"], but the defendant did not pay the same.

[*Conclude as ante*, 15.]

2. The like, payable at a particular Place only, and not otherwise or elsewhere (*a*).

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required

(*a*) See note (*a*), *ante*, 72.

the defendant to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill payable at [*as in the bill*] only, and not otherwise or elsewhere, and the said E. F. indorsed the same to the plaintiff [*or*, "and the said E. F. indorsed the same to K. J., and the said K. J. indorsed the same to the plaintiff"], and the said bill was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same.

[*Conclude as ante*, 15.]

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3. Surviving Indorsee *v.* Acceptor.

[*Commencement, ante*, 16.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, and the said E. F. indorsed the same to the plaintiff, and the said G. H. in his lifetime [*or* "the said E. F."] indorsed the same to one K. J., and the said K. J. indorsed the same to the plaintiff and the said G. H. in his lifetime, but the defendant did not pay the same.

[*Conclude as ante*, 17.]

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4. Indorsee *v.* Surviving Acceptor.

[*Commencement, ante*, 18.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant and the said G. H. in his lifetime, required the defendant and the said G. H. to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant and the said G. H. accepted the said bill, and the said E. F. indorsed the same to the plain-

tiff [*or* "and the said E. F. indorsed the same to K. J., and the said K. J. indorsed the same to the plaintiff"], but the defendant and the said G. H. did not nor did either of them pay the same.

[*Conclude as ante*, 19.]

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5. Husband and Wife, on a Bill indorsed to Wife before Marriage, *v.* Acceptor.

[*Commencement, ante*, 19.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, and the said E. F., whilst the said C. was sole and unmarried, indorsed the same to the said C. [*or* "and the said E. F. indorsed the same to one K. J., and the said K. J., whilst the said C. was sole and unmarried, indorsed the same to the said C."], but the defendant did not pay the same.

[*Conclude as ante*, 20.]

---

6. Indorsee *v.* Husband and Wife, on a Bill accepted by the Wife before Marriage.

[*Commencement, ante*, 20.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said G. whilst she was sole and unmarried, required the said G. to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said G., whilst she was sole and unmarried, accepted the said bill, and the said E. F. indorsed the same to the plaintiff [*or* "and the said E. F. indorsed the same to one K. J., and the said K. J. indorsed the same to the plaintiff"], but the said G. did not pay the same.

[*Conclude as ante*, 20.]

7. Executor or Administrator of Indorsee *v.* Acceptor.

[*Commencement, ante,* 20 *or* 21.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, and the said E. F. in the lifetime of the said G. H. indorsed the same to the said G. H. [*or* "and the said E. F. indorsed the same to one K.J., and the said K.J. in the lifetime of the said G.H. indorsed the same to the said G. H."], but the defendant did not pay the same.

[*Conclude as ante,* 20 *or* 21.]

---

8. Indorsee *v.* Executor or Administrator of Acceptor.

[*Commencement, ante,* 21.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said G. H., required the said G. H. to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said G. H. accepted the said bill, and the said E. F. indorsed the same to the plaintiff [*or* "and the said E. F. indorsed the same to one K. J., and the said K. J. indorsed the same to the plaintiff"], but the said G. H. did not pay the same.

[*Conclude as ante,* 21 *or* 22.]

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9. Executor or Administrator of Indorsee *v.* Executor or Administrator of Acceptor.

[*Commencement, ante,* 22.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the said L. M., required the said L. M. to pay the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or*

"sight"] thereof, and the said L. M. accepted the said bill, and the said E. F. indorsed the same to the said G. H. [*or* "and the said E. F. indorsed the same to one K. J., and the said K. J. indorsed the same to the said G. H."], but the said L. M. did not pay the same.

[*Conclude as ante*, 22.]

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10. Assignees of Indorsee, a Bankrupt, *v.* Acceptor.

[*Commencement, ante*, 26.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay the said E. F. or order £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, and the defendant accepted the said bill, and the said E. F., before the said G. H. became bankrupt as aforesaid, indorsed the same to the said G. H. [*or* "and the said E. F. indorsed the same to one K. J., and the said K. J., before the said G. H. became bankrupt as aforesaid, indorsed the same to the said G. H."], but the defendant did not pay the same.

[*Conclude as ante*, 26.]

---

11. Assignee of Indorsee, an Insolvent Debtor, *v.* Acceptor.

[*Commencement, ante*, 26.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay the said E. F. or order £ , days [weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, and the said E. F., before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H. [*or* "and the said E. F. indorsed the same to one K. J., and the said K. J., before the said G. H. became such insolvent debtor as afore-

said, indorsed the same to the said G. H."], but the defendant did not pay the same.

[*Conclude as ante*, 27.]

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12. By Public Officer of a Banking Company, Indorsees, *v.* Acceptor.

[*Commencement, ante*, 29.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said E. F. or order £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, and the said E. F. indorsed the same to the said copartnership [*or* "and the said E. F. indorsed the same to K. J., and the said K. J. indorsed the same to the said copartnership"], but the defendant did not pay the same.

[*Conclude as ante*, 29.]

PAYEE *v.* ACCEPTOR.

1. Payee *v.* Acceptor of a Bill accepted generally.

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 15.]

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2. The like, accepted payable at a particular Place only, and not otherwise or elsewhere (*b*).

For that one E. F., on the day of , in

(*a*) A count on the consideration and on an account stated may be added.

(*b*) See note (*a*), *ante*, 72.

the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the same payable at [*as in the bill*] only, and not otherwise or elsewhere, and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 15.]

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3. Surviving Payee *v.* Acceptor of a Bill.

[*Commencement, ante*, 16.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff and the said G. H., since deceased, £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 17.]

---

4. Payee *v.* Surviving Acceptor of a Bill.

[*Commencement, ante*, 18.]

For that one E. F., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to the defendant and the said G. H., since deceased, required the defendant and the said G. H., since deceased, to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant and the said G. H., since deceased, accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 19.]

(*a*) A count on the consideration and on an account stated may be added.

5. Husband and Wife (the Wife being Payee) *v.* Acceptor of a Bill.

[*Commencement, ante,* 19.]

For that one E. F. on the day of , in the year of our Lord 18 [*date of the bill*], and whilst the said C. was sole and unmarried, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said C. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante,* 20.]

---

6. Payee *v.* Husband and Wife, on a Bill accepted by the Wife before Marriage.

[*Commencement, ante,* 20.]

For that one E. F. on the day of , in the year of our Lord 18 [*date of the bill*] and whilst the said G. was sole and unmarried, by his bill of exchange, now overdue, directed to the said G., required the said G. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said G. whilst she was sole and unmarried, accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante,* 20.]

---

7. Executor or Administrator of Payee *v.* Acceptor of a Bill.

[*Commencement, ante,* 20 *or* 21.]

For that one E. F. on the day of , in the year of our Lord 18 [*date of the bill*] by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said G. H., since deceased, £ , days ["weeks" *or* "months"] after date [*or*

(*a*) A count on the consideration and on an account stated may be added.

"sight"] thereof, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 20 *or* 21.]

---

8. Payee *v.* Executor or Administrator of Acceptor of a Bill.

[*Commencement, ante*, 21.]

For that one E. F. on the day of , in the year of our Lord 18 [*date of the bill*] by his bill of exchange now overdue, directed to the said G. H., required the said G. H. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said G. H. accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 21 *or* 22.]

---

9. Executor or Administrator of a Payee *v.* Executor or Administrator of an Acceptor of a Bill.

[*Commencement, ante*, 22.]

For that one E. F. on the day of , in the year of our Lord 18 [*date of the bill*] by his bill of exchange, now overdue, directed to the said L. M., required the said L. M. to pay to the said G. H. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said L. M. accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 22.]

---

10. Assignees of Payee, a Bankrupt, *v.* Acceptor of a Bill.

[*Commencement, ante*, 26.]

For that one E. F. on the day of , in the year of our Lord 18 [*date of the bill*] and before the said

(*a*) A count on the consideration and on an account stated may be added.

G. H. became bankrupt, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said G. H. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 26.]

---

11. Assignee of Payee, an Insolvent Debtor, *v.* Acceptor of a Bill.

[*Commencement, ante*, 26.]

For that one E. F. on the day of in the year of our Lord 18 [*date of the bill*] and before the said G. H. became such insolvent debtor as aforesaid, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said G. H. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 27.]

---

12. By the Public Officer of a Banking Company, Payees, *v.* Acceptor.

[*Commencement, ante*, 29.]

For that one E. F. on the day of , in the year of our Lord 18 [*date of the bill*] by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said copartnership £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the defendant accepted the said bill, but did not pay the same (*a*).

[*Conclude as ante*, 29.]

(*a*) A count on the consideration and on an account stated may be added.

PAYEE *v.* DRAWER.

1. Payee *v.* Drawer, on default of Payment of a Bill (*a*).

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*] by his bill of exchange, now overdue, directed to J. K., required the said J. K. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight,* "saw and accepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same (*b*).

[*Conclude as ante,* 15.]

2. Surviving Payee *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 16.]

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the plaintiff and the said G. H. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. then accepted [*or, if payable after sight,* "saw and accepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same (*b*).

[*Conclude as ante,* 17.]

(*a*) If the bill be payable *after date*, and payable *generally*, the acceptance need not be stated, and should be omitted if it cannot be proved. See a form, post, in default of *acceptance*.

(*b*) A count on the consideration and on an account stated may be added.

3. Payee *v.* Surviving Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 18.]

For that the defendant and the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], by their bill of exchange, now overdue, directed to one J. K. required the said J. K. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight,* "saw and accepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the defendant and the said G. H. had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 19.]

---

4. Husband and Wife, on Bill made payable to the Wife before Marriage, *v.* Drawer, on default of Payment.

[*Commencement, ante,* 19.]

For that the defendant, on the day of , in year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay the said C., whilst she was sole and unmarried, £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight,* "saw and accepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 20.]

(*a*) A count on the consideration and on an account stated may be added.

5. Payee *v.* Husband and Wife, on default of Payment of a Bill drawn by the Wife before Marriage.

[*Commencement, ante,* 20.]

For that the said C., on the day of , in the year of our Lord 18 [*date of the bill*], and whilst she was sole and unmarried, by her bill of exchange, now overdue, directed to one J. K. required the said J. K. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight,* "saw and accepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the said C., whilst she was sole and unmarried, had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 20.]

---

6. Executor or Administrator of Payee *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 20 *or* 21.]

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the said G. H. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight,* "saw and accepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 20 *or* 21.]

---

7. Payee *v.* Executor or Administrator of Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 21.]

For that the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill

(*a*) A count on the consideration and on an account stated may be added.

of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the plaintiff £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight,* "saw and accepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the said G. H. had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 21 *or* 22.]

---

8. Executor or Administrator of Payee *v.* Executor or Administrator of Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 22.]

For that the said L. M., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the said G. H. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or if payable after sight,* "saw and accepted"] the same, and the said bill was duly presented for payment, and was dishonoured, of which the said L. M. had due notice, but did not pay the same (*a*).

[*Conclude as ante,* 22.]

---

9. Assignees of Payee, a Bankrupt, *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 26.]

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], and before the said G. H. became bankrupt as aforesaid, by his bill of exchange, now over due, directed to one J. K., required the said J. K. to pay to the said G. H. £ , ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight,* "saw and ac-

(*a*) A count on the consideration and on an account stated may be added.

cepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 26.]

---

10. Assignee of Payee, an Insolvent Debtor, *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante*, 26.]

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], and before the said G. H. became such insolvent debtor as aforesaid, by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the said G. H. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight*, "saw and accepted"] the same, and the said bill was duly presented for payment, and was dishonoured, of which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 27.]

---

11. By Public Officer of a Banking Company, Payees, *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante*, 29.]

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to J. K., required the said J. K. to pay to the said copartnership £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, and the said J. K. accepted [*or, if payable after sight*, "saw and accepted"] the same, and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same (*a*).

[*Conclude as ante*, 29.]

(*a*) A count on the consideration and on an account stated may be added.

INDORSEE *v.* DRAWER.

1. Indorsee *v.* Drawer, on default of Payment of a Bill.

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the defendant £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof [*and if payable after sight add,* "and the said J. K. saw and accepted the same"], and the defendant indorsed the same to the plaintiff [*or,* "and the defendant indorsed the same to L. M., and the said L. M. indorsed the same to the plaintiff"], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 15.]

2. Surviving Indorsee *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 16.]

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the defendant £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof [*and if payable after sight add,* "and the said J. K. saw and accepted the same"], and the defendant indorsed the same to the plaintiff and the said G. H. [*or* "and the defendant indorsed the same to L. M., and the said L. M. indorsed the same to the plaintiff and the said G. H."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 17.]

3. Indorsee *v.* Surviving Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 18.]

For that the defendant and the said G. H., on the day of , in the year of our Lord 18 [*date of the bill*], by their bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the defendant and the said G. H., since deceased, £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said J. K. saw and accepted the same"], and the defendant and the said G. H., since deceased, indorsed the same to the plaintiff [*or* "and the defendant and the said G. H., since deceased, indorsed the same to one L. M., and the said L. M. indorsed the same to the plaintiff"], and the said bill was duly presented for payment and was dishonoured, of which the defendant and the said G. H. had due notice, but did not pay the same.

[*Conclude as ante,* 19.]

---

4. Husband and Wife, on Bill indorsed to the Wife before Marriage, *v.* Drawer, on default of Payment.

[*Commencement, ante,* 19.]

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the defendant £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof [*and if payable after sight add,* "and the said J. K. saw and accepted the same"], and the defendant, whilst the said C. was sole and unmarried, indorsed the same to the said C. [*or* "and the defendant indorsed the same to one L. M., and the said L. M., whilst the said C. was sole and unmarried, indorsed the same to the said C."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 20.]

5. Indorsee *v.* Husband and Wife, on default of Payment of a Bill drawn by the Wife before Marriage.

[*Commencement, ante,* 20.]

For that the said G., on the day of , in the year of our Lord 18 , [*date of the bill*], whilst she was sole and unmarried, by her bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the said G. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said J. K. saw and accepted the same"], and the said G., whilst she was sole and unmarried, indorsed the same to the plaintiff, [*or* "and the said G., whilst she was sole and unmarried, indorsed the same to one L. M., and the said L. M. indorsed the same to the plaintiff"], and the said bill was duly presented for payment and was dishonoured, of which the said G., whilst she was sole and unmarried, had due notice, but did not pay the same.

[*Conclude as ante,* 20.]

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6. Executor or Administrator of Indorsee *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 20 *or* 21.]

For that the defendant, on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the defendant £ , days [*or* "weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said J. K. saw and accepted the same"]; and the defendant indorsed the same to the said G. H. [*or* "and the defendant indorsed the same to one L. M., and the said L. M. indorsed the same to the said G. H."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 20 *or* 21.]

7. Indorsee *v.* Executor or Administrator of Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 21.]

For that the said G. H., on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the said G. H., since deceased, £ , days [*or* "weeks" *or* "months"] after the date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said J. K. saw and accepted the same"]; and the said G. H. indorsed the same to the plaintiff [*or* "and the said G. H. indorsed the same to one L. M., and the said L. M. indorsed the same to the plaintiff"], and the said bill was duly presented for payment and was dishonoured, of which the said G. H., since deceased, had due notice, but did not pay the same.

[*Conclude as ante,* 21 *or* 22.]

---

8. Executor or Administrator of Indorsee *v.* Executor or Administrator of Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 22.]

For that the said L. M., on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the said G. H., since deceased, £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add,* and the said J. K. saw and accepted the same"]; and the said L. M. indorsed the same to the said G. H., since deceased, [*or* "and the said L. M. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the said G. H., since deceased"], and the said bill was duly presented for payment and was dishonoured, of which the said L. M. had due notice, but did not pay the same.

[*Conclude as ante,* 22.]

9. Assignees of Indorsee, a Bankrupt, *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 26.]

For that the defendant, on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the defendant £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said J. K. saw and accepted the same"], and the defendant, before the said G. H. became bankrupt as aforesaid, indorsed the same to the said G. H. [*or,* "and the defendant indorsed the same to one L. M., and the said L. M., before the said G. H. became bankrupt as aforesaid, indorsed the same to the said G. H."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 26.]

---

10. Assignee of Indorsee, an Insolvent Debtor, *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante,* 26.]

For that the defendant, on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the defendant £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said J. K. saw and accepted the same"], and the defendant, before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H. [*or* "and the defendant indorsed the same to one L. M., and the said L. M., before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 27.]

11. By the Public Officer of a Banking Company, Indorsees, *v.* Drawer, on default of Payment of a Bill.

[*Commencement, ante*, 29.]

For that the defendant, on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one J. K., required the said J. K. to pay to the order of the defendant £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, [*and if payable after sight*, "and the said J. K. saw and accepted the same"], and the defendant indorsed the same to the said copartnership [*or* "the defendant indorsed the same to one L. M., and the said L. M. indorsed the same to the said copartnership"], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice.

[*Conclude as ante*, 29.]

INDORSEE *v.* INDORSER, NOT BEING DRAWER.

1. Indorsee *v.* Indorser, not being Drawer.

For that one J. K., on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of J. K. £ , days ["weeks" *or* "months"] after the date ["*or* sight"] thereof, [*and if payable after sight add*, "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the same to the defendant, and the defendant indorsed the same to the plaintiff [*or* "and the said J. K. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the defendant, and the defendant indorsed the same to the plaintiff"], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante*, 15.]

2. Surviving Indorsee *v.* Indorser, not being Drawer.

[*Commencement, ante,* 16.]

For that one J. K., on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said O. P. saw and accepted the same"], and the said O. P. indorsed the same to the defendant, and the defendant indorsed the same to the plaintiff and the said G. H., since deceased [*or* "and the said O. P. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the defendant, and the defendant indorsed the same to the plaintiff and the said G. H., since deceased"], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 17.]

---

3. Indorsee *v.* Surviving Indorser, not being Drawer.

[*Commencement, ante,* 18.]

For that one J. K., on the day of , in the year of our Lord 18 , [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the same to the defendant and the said G. H., since deceased, and the defendant and the said G. H., since deceased, indorsed the same to the plaintiff [*or* "and the said J. K. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the defendant and the said G. H., since deceased, and the defendant and the said G. H., since deceased, indorsed the same to the plaintiff"],

and the said bill was duly presented for payment and was dishonoured, of which the defendant and the said G. H., since deceased, had due notice, but did not pay the same.

[*Conclude as ante*, 19.]

---

4. Husband and Wife, on Bill indorsed to the Wife before Marriage, *v.* Indorser, not being Drawer.

[*Commencement, ante*, 19.]

For that one J. K., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add*, "and the said O. P. saw and accepted the same,"] and the said J. K. indorsed the same to the defendant, and the defendant, whilst the said C. was sole and unmarried, indorsed the same to the said C. [*or*, "and the said J. K. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the defendant, and the defendant, whilst the said C. was sole and unmarried, indorsed the same to the said C."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante*, p. 20.]

---

5. Indorsee *v.* Husband and Wife, on default of Payment of a Bill indorsed by the Wife before Marriage.

[*Commencement, ante*, 20.]

For that one J. K., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add*, "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the same to the said G., and the said G., whilst she was sole

and unmarried, indorsed the same to the plaintiff, [*or*, "and the said J. K. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the said G., and the said G., whilst she was sole and unmarried, indorsed the same to the plaintiff"], and the said bill was duly presented for payment and was dishonoured, of which the said G., whilst she was sole and unmarried, had notice, but did not pay the same.

[*Conclude as ante*, 20.]

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6. Executor or Administrator of Indorsee *v.* Indorser, not being Drawer.

[*Commencement, ante*, 20 *or* 21.]

For that one J. K., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof, [*and if payable after sight add*, "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the same to the defendant, and the defendant indorsed the same to the said G. H. [*or*, "and the said J. K. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the defendant, and the defendant indorsed the same to the said G. H."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante*, 20 *or* 21.]

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7. Indorsee *v.* Executor or Administrator of Indorser, not being Drawer.

[*Commencement, ante*, 21.]

For that one J. K., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after date [*or* "sight"] thereof,

[*and if payable after sight add,* "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the same to the said G. H., and the said G. H. indorsed the same to the plaintiff, [*or,* "and the said J. K. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the said G. H., and the said G. H. indorsed the same to the plaintiff"], and the said bill was duly presented for payment and was dishonoured, of which the said G. H., since deceased, had due notice, but did not pay the same.

[*Conclude as ante,* 21 *or* 22.]

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8. Executor or Administrator of Indorsee *v.* Executor or Administrator of Indorser, not being Drawer.

[*Commencement, ante,* 22.]

For that one J. K., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the same to the said L. M., and the said L. M. indorsed the same to the said G. H. [*or,* "and the said J. K. indorsed the same to one X. Y., and the said X. Y. indorsed the same to the said L. M., and the said L. M. indorsed the same to the said G. H."], and the said bill was duly presented for payment and was dishonoured, of which the said L. M. had due notice, but did not pay the same.

[*Conclude as ante,* 22.]

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9. Assignees of Indorsee, a Bankrupt, *v.* Indorser.

[*Commencement, ante,* 26.]

For that one J. K., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after the date [*or* "sight"] there-

of, [*and if payable after sight add,* "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the said bill to the defendant, and the defendant, before the said G. H. became bankrupt as aforesaid, indorsed the same to the said G. H. [*or,* "and the said J. K. indorsed the same to X. Y., and the said X. Y. indorsed the same to the defendant, and the defendant, before the said G. H. became bankrupt as aforesaid, indorsed the same to the said G. H."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 26.]

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10. Assignees of Indorsee, an Insolvent Debtor, *v.* Indorser.

[*Commencement, ante,* 26.]

For that one J. K., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the same to the defendant, and the defendant, before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H. [*or,* "and the defendant indorsed the same to one X. Y., and the said X. Y. indorsed the same to the defendant, and the defendant, before the said G. H. became such insolvent debtor as aforesaid, indorsed the same to the said G. H."], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 27.]

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11. By Public Officer of a Banking Company, Indorsees, *v.* Indorser, not being Drawer.

[*Commencement, ante,* 29.]

For that one J. K., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, now overdue, directed to one O. P., required the said O. P. to pay to the order of the said J. K. £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, [*and if payable after sight add,* "and the said O. P. saw and accepted the same"], and the said J. K. indorsed the said bill to the defendant, and the defendant indorsed the same to the said copartnership [*or,* "and the said J. K. indorsed the same to X. Y., and the said X. Y. indorsed the same to the defendant, and the defendant indorsed the same to the said copartnership"], and the said bill was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

[*Conclude as ante,* 29.]

SECTION VI.

COUNTS ON THE NON-ACCEPTANCE OF BILLS OF EXCHANGE AND THE NON-PAYMENT OF CHECKS.

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1. Payee *v.* Drawer of a Bill, on Non-acceptance (*a*).

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange, directed to A., required A. to pay to the plaintiff £ , [*two*] months after date, and the said bill was duly presented for acceptance and was dishonoured, of which the defendant had due notice, but did not pay the same.

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2. Indorsee *v.* Drawer of a Bill, on Non-acceptance (*b*).

For that the defendant, on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange directed to one J. K., required the said J. K. to

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(*a*) This form is given by the Common Law Procedure Act, 1852.

(*b*) This and the two following forms were, in the last edition of this work, framed in accordance with the forms given by the Reg. Trin T., 1 Will. 4, but are now altered in accordance with the short forms given in the Common Law Procedure Act.

The Reg. Gen. Trin. T. 1 W. 4, contained the following directions:

"If the declaration be against any party to the bill, except the drawee or acceptor, and the bill be payable at any time *after date*, and the action not brought till the time is expired, it will be *necessary* to insert, as in the declarations on promissory notes, immediately after the words denoting the time for payment, the following words, viz. 'which period has now elapsed,' and instead of averring that the bill was presented to the drawee for acceptance, and that he

pay to the order of the defendant £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, and the defendant indorsed the same to the plaintiff [*or* "and the defendant indorsed the same to one L. M., and the said L. M. indorsed the same to the plaintiff"], and the said bill was duly presented for acceptance and was dishonoured, of which the defendant had due notice, but did not pay the same.

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3. Indorsee *v.* Indorser of a Bill, on Non-acceptance.

For that one N. O., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange directed to one P. Q., required the said P. Q. to pay to his order £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, and the said N. O. indorsed the said bill to the defendant [*or* "and the said N. O. indorsed the said bill to one R. S., and the said R. S. indorsed the same to the defendant"], and the defendant indorsed the same to the plaintiff, and the said bill was duly presented for acceptance and was dishonoured, of which the defendant had due notice, but did not pay the same.

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refused to accept the same, to allege that the drawee (naming him) did not pay the said bill, although the same was then presented to him on the day when it became due.

"And if the declaration be against any party except the drawee or acceptor, and the bill be payable at any time *after sight*, it will be necessary to insert after the words denoting the time appointed for payment, the following words, viz. '*and the said drawee* (naming him) then and there saw and accepted the same, and the said period has now elapsed;' and instead of alleging that the bill was presented for acceptance and refused, to allege that the drawee (naming him) did not pay the said bill, although the same was presented to him on the day when it became due."

If, therefore, the action be against the drawee, indorsee, or payee, and the time mentioned in the bill has expired, the forms before given against those parties on default made *in payment* should be used, instead of the forms on *non-acceptance*.

4. Indorsee *v.* Payee of a Bill of Exchange, on Non-acceptance.

For that one N. O., on the day of , in the year of our Lord 18 [*date of the bill*], by his bill of exchange directed to one P. Q., required the said P. Q. to pay to the defendant or order £ , days ["weeks" *or* "months"] after the date [*or* "sight"] thereof, and the defendant indorsed the said bill to the plaintiff [*or* "and the said defendant indorsed the same to one R. S., and the said R. S. indorsed the same to the plaintiff"], and the said bill was duly presented for acceptance and was dishonoured, of which the defendant had due notice, but did not pay the same.

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5. Payee *v.* Drawer of a Check.

For that the defendant, on the day of , in the year of our Lord 18 [*date of the check*], made his draft or order in writing for the payment of money, called a banker's check, and directed the same to Messrs. and Co. [*as in the check*], and thereby required the said Messrs. and Co. to pay to the plaintiff or bearer £ , and then delivered the same to the plaintiff, and the said check was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

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6. Bearer *v.* Drawer of a Check.

For that the defendant, on the day of , in the year of our Lord 18 [*date of the check*] made his draft or order in writing for the payment of money called a banker's check, and directed the same to Messrs. and Co., and thereby required the said Messrs. and

Co. to pay to X. Y. or bearer £ , and then delivered the same to the said X. Y., who then transferred and delivered the same to the plaintiff, who still is the bearer thereof; and the said check was duly presented for payment and was dishonoured, of which the defendant had due notice, but did not pay the same.

SECTION VII.

COUNTS ON FOREIGN BILLS OF EXCHANGE.

1. Drawer *v.* Acceptor of Bill drawn abroad for Foreign Coin payable at Usances.

For that the plaintiff, on the day of [*date of bill*], in parts beyond the seas, to wit, at (*a*), by his bill of exchange, now overdue, directed to the defendant, required the defendant at [*two*] usances to pay that his second of exchange (first and third of the same tenor and date not paid) to the plaintiff the sum of £ , and the defendant accepted the said bill, but did not pay the same.

2. Payee or Indorsee *v.* Drawer or Indorser, on Refusal of Drawee to accept, stating Protest.

For that E. F., on the day of , [*date of bill*], in parts beyond the seas, to wit, at , made his bill of exchange, now overdue, and directed the same to G. H., and thereby requested the said G. H. months after the date of that his second bill of exchange (first and third of the same tenor and date not paid), to pay to J. K. or order £ , and the said J. K. indorsed the said bill to the plaintiff, and the said bill was duly presented for acceptance and was dishonoured, whereupon the said bill was duly protested for non-acceptance thereof, of all which the defendant had due notice, but did not pay the same.

(*a*) The declaration on a foreign bill of exchange must allege that it was made in parts beyond the seas; Armani *v.* Castrique, 2 D. & L. 432. Though the bill be in a foreign language, it may be stated in English; 1 Wightw. 9.

3. Payee or Indorsee *v.* Drawer or Indorser on Refusal of Acceptor to pay, and Protest for Non-payment.

For that the defendant [*or* "E. F."], on the day of [*date of bill*], in parts beyond the seas, to wit, at , made his bill of exchange, now overdue, and directed the same to G. H., and thereby required the said G. H. two months after the date of that his second of exchange (first and third of the same tenor and date not paid), to pay to J. K. or order £ , and the said J. K. indorsed the same to the plaintiff, and the said bill was duly presented for payment and was dishonoured, and thereupon the same was duly protested for nonpayment thereof, of which the defendant had due notice, but did not pay the same.

SECTION VIII.

COUNTS FOR WRONGS INDEPENDENT OF CONTRACT (*a*).

1. For Trespass to Land.

In the Queen's Bench ["Common Pleas" *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 .

Venue.]—A. B., by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D.

For that the defendant broke and entered certain land of the plaintiff called the Big Field (*b*), and depastured the same with cattle (*c*). And the plaintiff claims £ .

2. For Assault, Battery and False Imprisonment.

For that the defendant assaulted and beat the plaintiff, gave him into custody of a policeman, and caused him to be imprisoned in a police office (*c*). And the plaintiff claims £ .

3. For Crim. Con.

For that the defendant debauched and carnally knew the plaintiff's wife (*c*). And the plaintiff claims £ .

(*a*) The 49th section of the statute enacts, that all statements which need not be proved, such as the statement of time, quantity, quality and value, where these are immaterial; the statement of losing and finding, and bailment in actions for goods or their value; the statement of acts of trespass having been committed with force and arms, and against the peace of our lady the queen, and all statements of a like kind, shall be omitted.

(*b*) The Reg. Gen. Hil. T. 4 Will. IV. required the close to be stated by name or abuttals, or the declaration was open to *special* demurrer; but as special demurrers are now in effect abolished, the rule no longer applies, although from this form it would seem that the name of the close should be stated if it be known by any name.

(*c*) See note (*e*), post, 117.

4. For Wrongful Conversion of Goods.

For that the defendant converted to his own use, or wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods, (that is to say) iron, hops, household furniture [*or as the case may be*]. And the plaintiff claims £ .

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5. For Wrongful Detention of Property, &c.

For that the defendant detained from the plaintiff his title deeds of land called Belmont, in the county of , (that is to say) [*describe the deeds*]. And the plaintiff claims a return of the said deeds or their value, and £ for their detention.

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6. For diverting Water from a Mill.

For that the plaintiff was possessed of a mill, and by reason thereof was entitled to the flow of a stream for working the same, and the defendant, by cutting the bank of the said stream, diverted the water thereof away from the said mill. And the plaintiff claims £ .

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7. For Infringement of a Patent.

For that the plaintiff was the first and true inventor of a certain new manufacture, (that is to say) of "certain improvements in the manufacture of sulphuric acid," and thereupon her Majesty Queen Victoria, by letters-patent under the great seal of England, granted the plaintiff the sole privilege to make, use, exercise and vend the said invention within England for the term of fourteen years from the day of , A. D. , subject to a condition that the plaintiff should, within six calendar months next after the date of the said letters-patent, cause to be enrolled in the High Court of Chancery an instrument in writing, under his hand and seal, particularly describing and ascer-

taining the nature of his said invention, and in what manner the same was to be and might be performed, and the plaintiff did within the time prescribed fulfil the said condition, and the defendant during the said term did infringe the said patent right. And the plaintiff claims £ .

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8. For Slander of Character (*d*).

For that the defendant falsely and maliciously spoke and published of the plaintiff the words following, (that is to say) "He is a thief" [*if there be any special damage, here state it with such reasonable particularity as to give notice to the defendant of the peculiar injury complained of, for instance*], whereby the plaintiff lost his situation as gamekeeper in the employ of A. (*e*). And the plaintiff claims £ .

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9. For a Libel (*f*).

For that the defendant falsely and maliciously printed and published of the plaintiff in a newspaper, called , the words following, (that is to say) "He is a regular prover under bankruptcies," the defendant meaning thereby that the plaintiff had proved and was in the habit of proving fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious. And the plaintiff claims £ .

(*d*) The 61st section of the Common Law Procedure Act, 1852, enacts, that in actions of libel and slander the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense, without any prefatory averment to show how such words or matters were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander, and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient.

(*e*) It will be observed, that this is the only instance in the above forms where *special* damage is alleged. This may be merely for the purpose of showing that where words are not actionable without special damage, that it should be alleged; but as there is no express provision for dispensing with the allegation of special damage in other cases, it should still be alleged if it can be proved.

(*f*) See note (*a*), *supra*.

PART IV.

SECTION I.

AS TO THE LANGUAGE AND FORM OF PLEADINGS IN GENERAL.

With respect to the language and form of pleadings in general, the statute enacts:

Judgment upon Demurrer to be given according to the very Right of the Cause.

That either party may object by demurrer to the pleading of the opposite party, on the ground that such pleading does not set forth sufficient ground of action, defence or reply, as the case may be; and where issue is joined on such demurrer, the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in or lack of form; and no judgment shall be arrested, stayed or reversed for any such imperfection, omission, defect in or lack of form.—Sect. 50.

Objections by way of Special Demurrer taken away.

That no pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer.—Sect. 51.

Pleadings framed to embarrass may be struck out or amended.

That if any pleading be so framed as to prejudice, embarrass or delay the fair trial of the action, the opposite party may apply to the court or a judge to strike out or amend such pleading, and the court or any judge shall make such order respecting the same, and also respecting the costs of the application, as such court or judge shall see fit.—Sect. 52.

Four Days' Notice substituted for Rule to declare, reply or rejoin.

That rules to declare, or declare peremptorily, and rules to reply, and plead subsequent pleadings, shall not be necessary, and instead thereof a notice shall be substituted requiring the opposite party to declare, reply, rejoin, or as the case may be, within four days, otherwise judgment, such notice to be delivered separately or indorsed on any pleading to which the opposite party is required to reply, rejoin, or as the case may be.—Sect. 53.

Pleadings to be dated and entered as of Time of Pleading, unless Order to the contrary.

That every declaration and other pleading shall be entitled of the proper court, and of the day of the month and the year when the same was pleaded, and shall bear no other time or date, and every

declaration and other pleading shall also be entered on the record made up for trial and on the judgment roll under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the court or a judge.—Sect. 54.

Profert and Oyer abolished.

That it shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and if profert shall be made it shall not entitle the opposite party to crave oyer of or set out upon oyer such deed or other document.—Sect. 55.

Document may be set forth, and be considered a Part of the Pleading in which it is set forth.

That a party pleading in answer to any pleading in which any document is mentioned or referred to shall be at liberty to set out the whole or such part thereof as may be material, and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.—Sect. 56.

Performance of Conditions precedent may be averred generally.

That it shall be lawful for the plaintiff or defendant in any action to aver performance of conditions precedent generally, and the opposite party shall not deny such averment generally, but shall specify in his pleading the condition or conditions precedent the performance of which he intends to contest.—Sect. 57.

Rules to plead and Demand of Plea abolished.

That no rule to plead or demand of plea shall be necessary, and the notice to plead indorsed on the declaration or delivered separately shall be sufficient.—Sect. 62.

Time for pleading, where Defendant is within Jurisdiction, to be Eight Days.

That in cases where the defendant is within the jurisdiction, the time for pleading in bar, unless extended by the court or a judge, shall be eight days; and a notice requiring the defendant to plead thereto in eight days, otherwise judgment, may, whether the declaration be delivered or filed, be indorsed upon the declaration, or delivered separately.—Sect. 63.

Express Colour abolished.

That express colour shall no longer be necessary in any pleading. —Sect. 64.

Special Traverses abolished.

That special traverses shall not be necessary in any pleading.—Sect. 65.

Formal Commencement and Prayer of Judgment unnecessary.

That in a plea or subsequent pleading it shall not be necessary to use any allegation of *actionem non*, or *actionem ulterius non*, or to the like effect, or any prayer of judgment, nor shall it be necessary in any replication or subsequent pleading, to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment.—Sect. 66.

Pleas to Actions partaking both of Breach of Contract and Wrong.

That whereas certain causes of action may be considered to partake of the character both of breaches of contract and of wrongs,

and doubts may arise as to the form of pleas in such actions, and it is expedient to preclude such doubts: any plea, which shall be good in substance, shall not be objectionable on the ground of its treating the declaration either as framed for a breach of contract, or for a wrong.—Sect. 74.

Payment, Set-off, and other Pleadings which can be construed distributively shall be so construed.

That pleas of payment and set off, and all other pleadings capable of being construed distributively, shall be taken distributively, and if issue is taken thereon, and so much thereof as shall be sufficient answer to part of the causes of action proved shall be found true by the jury, a verdict shall pass for the defendant in respect of so much of the causes of action as shall be answered, and for the plaintiff in respect of so much of the causes of action as shall not be so answered. —Sect. 75.

Traverse of the Declaration.

That a defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration, although it might have been included in a general traverse.—Sect. 76.

Traverse of Plea or subsequent Pleading of Defendant.

That a plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or, admitting some part or parts thereof, to deny all the rest, or to deny any one or more allegations.—Sect. 77.

Traverse of Replication or subsequent Pleading of the Plaintiff.

That a defendant shall be at liberty in like manner to deny the whole or part of a replication or subsequent pleading of the plaintiff. —Sect. 78.

As to Pleading and Demurring together.

That either party may, by leave of the court or a judge, plead and demur to the same pleading at the same time, upon an affidavit by such party, or his attorney, if required by the court or judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the court or a judge to direct which issue shall be first disposed of.—Sect. 80.

Several Matters may be pleaded at any Stage of the Pleadings.

That the plaintiff in any action may, by leave of the court or a judge, plead in answer to the plea, or the subsequent pleading of the defendant, as many several matters as he shall think necessary to sustain his action; and the defendant in any action may, by leave of the court or a judge, plead in answer to the declaration, or other subsequent pleading of the plaintiff, as many several matters as he shall think necessary for his defence, upon an affidavit of the party making such application, or his attorney, if required by the court or

judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact; provided that the costs of any issue, either of fact or law, shall follow the finding or judgment upon such issue, and be adjudged to the succesful party, whatever may be the result of the other issue or issues.—Sect. 81.

Judge's Order to plead several Matters sufficient.

That no rule of court for leave to plead several matters shall be necessary where a judge's order has been made for the same purpose. —Sect. 82.

Objections to Pleadings to be heard on Summons to plead several Matters.

That all objections to the pleading to several pleas, replications or subsequent pleadings, or several avowries or cognizances, on the ground that they are founded on the same ground of answer or defence, shall be heard upon the summons to plead several matters. —Sect. 83.

Certain Pleas may be pleaded together without Leave.

That the following pleas, or any two or more of them, may be pleaded together as of course, without leave of the court or a judge; that is to say, a plea denying any contract or debt alleged in the declaration; a plea of tender as to part; a plea of the Statute of Limitations, set-off, bankruptcy of the defendant, discharge under an insolvent act, plenè administravit, plenè administravit præter, infancy, coverture, payment, accord and satisfaction, release, not guilty, a denial that the property an injury to which is complained of is the plaintiff's, leave and licence, son assault demesne, and any other pleas which the judges of the said superior courts, or any eight or more of them, of whom the chief judges of the said courts shall be three, shall by any rule or order, to be from time to time by them made in term or vacation, order or direct.—Sect. 84.

Signature of Counsel.

That the signature of counsel shall not be required to any pleading. —Sect. 85.

For pleading several Matters without Leave, Judgment may be signed.

That except in the cases herein specifically provided for, if either party plead several pleas, replications, avowries, cognizances, or other pleadings, without leave of the court or a judge, the opposite party shall be at liberty to sign judgment; provided that such judgment may be set aside by the court or a judge, upon an affidavit of merits, and such terms as to costs and otherwise as they or he may think fit.—Sect. 86.

One new Assignment only allowed in respect of the same Cause of Action.

That one new assignment only shall be pleaded to any number of pleas to the same cause of action; and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify, or

for an excess over and above what all the defences set up in such pleas justify, or both.—Sect. 87.

Pleas not to be repeated.

That no plea, which has already been pleaded to the declaration, shall be pleaded to such new assignment, except a plea in denial, unless by leave of the court or a judge; and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.—Sect. 88.

Time for pleading after Amendment.

That where an amendment of any pleading is allowed, no new notice to plead thereto shall be necessary; but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever shall last expire, unless otherwise ordered by the court or a judge; and in case the amended pleading has been pleaded to before amendment, and is not pleaded to *de novo* within two days after amendment, or within such other time as the court or a judge shall allow, the pleadings originally pleaded thereto shall stand and be considered as pleaded in answer to such amended pleading.—Sect. 90.

SECTION II.

PLEAS IN ACTIONS ON CONTRACT.

1. Commencement of Plea (*b*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of , in the year of our Lord 18 .

C. D. ats. A. B. } The defendant, by , his attorney [*or* "in person"] says [*here state the substance of the plea.*]

(*b*) The 67th section enacts, that no formal defence shall be required in a plea, or avowry, or cognizance, and it shall commence as follows, or to the like effect:

"The defendant, by , his attorney [*or* 'in person' *or as the case may be*] says that [*here state first defence*]."

And it shall not be necessary to state in a second or other plea, or avowry, or cognizance, that it is pleaded by leave of the court or a judge, or according to the form of the statute, or to that effect, but every such plea, avowry, or cognizance, shall be written in a separate

2. Commencement of Second Plea.

And for a second plea the defendant says [*here state the second plea.*]

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3. Commencement of a Plea to Part of a Declaration.

And for a second plea to [*stating to what part it is pleaded*], the defendant says that .

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4. Commencement of Plea by an Infant.

And the defendant, by E. F., admitted by the court here as guardian of the said defendant to defend for the said defendant, who is an infant under the age of twenty-one years, says that .

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5. Plea of Never Indebted (*c*).

That he never was indebted as alleged.

---

paragraph and numbered, and shall commence as follows, or to the like effect:

"And for a second [*&c.*] plea the defendant says that [*here state second, &c. defence*],"

or if pleaded to part only, then as follows, or to the like effect:

"And for a second [*&c.*] plea to [*stating to what it is pleaded*], the defendant says that, &c."

and no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading.

(*c*) This plea is applicable to those counts beginning with the words "For money payable, &c." where no special contract is alleged, but if there be any special agreement alleged, or the declaration be on a deed, promissory note, or bill of exchange, &c., this plea will be inapplicable, and the defendant must deny the making of the promise or agreement, or the making of the deed or promissory note, or the accepting or endorsing of the bill of exchange, &c.

By the General Rules of Hilary Term, 4 Will. IV., it was ordered, that "in all actions of assumpsit, except on bills of exchange and promissory notes, the plea of non-assumpsit should operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact from which the contract or promise alleged may be implied by law.

"*Ex. gr.* In an action on a warranty, the plea would operate as a

denial of the fact of the warranty having been given upon the alleged consideration, but not of the breach; and in an action on a policy of insurance, of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with the warranties.

"In actions against carriers and other bailees, for not delivering or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, the plea would operate as a denial of any express contract to the effect alleged in the declaration; and of such bailment or employment as would raise a promise in law to the effect alleged, but not of the breach.

"In an action of indebitatus assumpsit, for goods sold and delivered, the plea of non-assumpsit would operate as a denial of the sale and delivery in point of fact; in the like action for money had and received, it would operate as a denial both of the receipt of the money, and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff.

"In all actions upon bills of exchange and promissory notes, the plea of non-assumpsit should be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact, *ex. gr.* the drawing, or making, or indorsing, or accepting, or presenting, notice of dishonour of the bill or note.

"In every species of assumpsit, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law, on the ground of fraud or otherwise, should be specially pleaded, *ex. gr.* infancy, coverture, release, payment, performance, illegality of consideration, either by statute or common law, drawing, indorsing, accepting, &c., bills or notes by way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other defences, must be pleaded.

"That the plea of nil debet should not be allowed in any action, but that in actions of debt on simple contract, *other than on bills of exchange and promissory notes*, the defendant might plead that 'he never was indebted in manner and form as in the declaration alleged,' and such plea should have the same operation as the plea of non-assumpsit in indebitatus assumpsit; and that all matters in confession and avoidance should be pleaded specially as directed in actions of assumpsit.

"That in other actions of debt in which the plea of nil debet had been before then allowed, including those on bills of exchange and promissory notes, the defendant should deny specifically some particular matter of fact alleged in the declaration, or plead specially in confession and avoidance."

And these rules will still be generally applicable. The 76th section of the Common Law Procedure Act, 1852, enacts, that a defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration, although it might have been included in a general traverse.

6. Plea of Non-assumpsit or Denial of Contract (*a*).

That he did not promise [*or* "agree," *or* "warrant,"] as alleged.

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7. Plea of Non est factum.

That the alleged deed is not his deed (*b*).

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8. Plea of Statute of Limitations (*c*).

That the alleged cause of action did not accrue within six years [*state the period of limitation applicable to the case*] before this suit.

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9. Plea of Payment before Action (*d*).

That before action be satisfied and discharged, the plaintiff's claim by payment.

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10. Plea of Set-off (*d*).

That the plaintiff at the commencement of this suit was and still is indebted to the defendant in an amount equal to

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(*a*) This plea is not applicable to a declaration on a bill or note, nor to any of the counts beginning with the words "Money payable, &c." as no promise is alleged in these counts. Where the declaration is on a bill or note, the plea should traverse the acceptance, or making or endorsing, &c., as before the statute. See last note, and the rules of H. T. 4 Will. 4, there set forth.

(*b*) This plea operates as a denial of the execution of the bond or deed in point of fact only, and all other defences must be pleaded specially, including matters which make the bond or deed absolutely void, as well as those which make it voidable. See Reg. Gen. Hil. T. 4 W. 4.

(*c*) As to the renewal of writs of summons to save the Statute of Limitations, and for other purposes, see 11th, 12th and 13th sections of the Common Law Procedure Act, 1852.

(*d*) The 75th section of the Common Law Procedure Act, 1852, enacts that pleas of payment and set-off, and all other pleadings capable of being construed distributively, shall be taken distributively, and if issue is taken thereon, and so much thereof as shall be sufficient answer to part of the causes of action proved shall be found true by the jury, a verdict shall pass for the defendant in

the plaintiff's claim for [*here state the cause of set-off*] money payable by the plaintiff to the defendant for goods sold and delivered by the defendant to the plaintiff.

And for goods bargained and sold by the defendant to the plaintiff.

And for work done and materials provided by the defendant for the plaintiff at his request.

And for money lent by the defendant to the plaintiff.

And for money paid by the defendant for the plaintiff at his request.

And for money received by the plaintiff for the use of the defendant.

And for money found to be due from the plaintiff to the defendant on accounts stated between them, which amount the defendant is willing to set off against the plaintiff's claim.

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11. Plea of Release.

That after the alleged claim accrued and before this suit, the plaintiff by deed released the defendant therefrom.

---

12. Plea of Payment of Money into Court (*e*).

The defendant, by his attorney [*or* "in person"],

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respect of so much of the causes of action as shall be answered, and for the plaintiff in respect of so much of the causes of action as shall not be so answered.

The general rule is, that a plea is an entire thing, and bad altogether if disproved in part; but to this rule there are exceptions which have been long established, for instance, *plene administravit*, set-off, Statute of Limitations, payment. &c., see the judgment of Parke, B., in Cousins *v.* Paddon, 4 Dowl. 494.

(*e*) The 70th section of the Common Law Procedure Act, 1852, enacts, that it shall be lawful for the defendant in all actions, except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, crim. con., or debauching of the plaintiff's daughter or servant, and by leave of the court or a judge, upon such terms as they or he may think fit, for one or more of several defendants to pay into court a sum of money by way of compensation or amends, provided that nothing herein contained shall be taken to affect the provisions of a certain act of parliament passed in the session of parliament holden in the 6th and 7th years of the reign of her present majesty, intituled, "An Act to amend the

brings into court the sum of £ , and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to.

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13. Like Plea to Part (*f*).

The defendant, by his attorney [*or* "in person"], as to £ , parcel of the money claimed, brings into court the sum of £ , and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to.

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14. Plea denying making Note.

That the said alleged note is not his note (*g*).

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15. Plea denying Indorsement of Note.

That he did not indorse the note as alleged.

Law respecting Defamatory Words and Libel." The 71st section enacts, that when money is paid into court such payment shall be pleaded in all cases, and as near as may be in the above form. The 72nd section enacts, that no rule or judge's order to pay money into court shall be necessary, except in the case of one or more of several defendants, but the money shall be paid to the proper officer of each court, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the plaintiff, or to his attorney, upon a written authority from the plaintiff on demand. The 73rd section enacts, that the plaintiff, after the delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and in case of non-payment thereof within forty-eight hours to sign judgment for his costs of suit so taxed, or the plaintiff may reply that the sum paid into court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded, and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

(*f*) See note (*e*), *supra*.

(*g*) The form does not now allege that the defendant *made* his note, and the plea of non-assumpsit cannot be pleaded, so that this appears to be the proper plea.

16. Plea denying Presentment of Note.

That the said note was not duly presented for payment as alleged.

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17. Plea denying Notice of Dishonour of Note.

That he had not due notice of the presentment and dishonour of the said note as alleged.

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18. Plea denying Acceptance of Bill of Exchange.

That he did not accept the said bill of exchange as alleged.

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19. Plea denying Indorsement of Bill of Exchange.

That he did not indorse the said bill of exchange as alleged.

---

20. Plea denying Presentment of Bill of Exchange.

That the said bill of exchange was not duly presented for payment as alleged.

---

21. Plea denying Notice of Dishonour of Bill of Exchange.

That he had not due notice of the presentment and dishonour of the said bill of exchange as alleged.

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22. Plea of Non-joinder of a co-Contractor (*h*).

That the alleged contracts in the declaration mentioned were made by and the said monies claimed were payable

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(*h*) The 66th section of the Common Law Procedure Act, 1852, enacts, that in a plea or subsequent pleading it shall not be necessary to use any allegation of *actionem non* or *actionem ulterius non*, or to the like effect, or any prayer of judgment, nor shall it be neces-

from him the said C. D., defendant, jointly with one E. F., who is still living, and who, before and at the time of the commencement of this suit, was and still is resident within the jurisdiction of this court, and not by or from the defendant alone.

23. Affidavit in support of Plea.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

Between, &c.

C. D., of , in the county of , tailor, the above-named defendant in this cause, maketh oath and saith that the plea hereunto annexed is true in substance and in fact, and that the said E. F. therein named, at the time of the commencement of this suit, resided and doth still reside at , and within the jurisdiction of this court.

Sworn, &c.

SECTION III.

PLEAS IN ACTIONS FOR WRONGS INDEPENDENT OF CONTRACTS.

1. Plea of Not guilty (*a*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 .

C. D. ats. A. B. } The defendant by E. F., his attorney [*or* "in person"], says that he is not guilty.

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sary in any replication or subsequent pleading to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment. No formal conclusion is necessary, see section 67. As to the proceedings under this plea, see sections 38 and 39 of the Common Law Procedure Act, 1852.

(*a*) In actions of trespass *quare clausum fregit*, this plea will operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession

2. Plea of Leave and Licence.

That he did what is complained of by the plaintiff's leave.

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3. Plea of Assault in Self-Defence.

That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defence.

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or right of possession of that place, which, if intended to be denied, must be traversed specially.

In actions of trespass *de bonis asportatis* this plea will operate as a denial of the defendant having committed the trespass alleged, by taking or damaging the goods mentioned, but not of the plaintiff's property therein.

In actions on the case this plea will operate as a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant, and not of the facts stated in the inducement, and no other defence than such denial is admissible under this plea: all other pleas in denial must take issue on some particular matter of fact alleged in the declaration.

Ex. gr. In an action on the case for a nuisance to the occupation of a house by carrying on an offensive trade, the plea of not guilty will operate as a denial only that the defendant carried on the alleged trade in such a way as to be a nuisance to the occupants of the house, and will not operate as a denial of the plaintiff's occupation of the house.

In an action on the case for obstructing the right of way, such plea will operate as a denial of the obstruction only, and not of the plaintiff's right of way; and in an action for converting the plaintiff's goods, the conversion only, and not the plaintiff's title to the goods.

In an action of slander of the plaintiff in his office, profession, or trade, the plea of not guilty will operate in denial of speaking the words, of speaking them maliciously, and in the sense imputed, and with reference to the plaintiff's office, profession, or trade; but it will not operate as a denial of the fact of the plaintiff holding the office, or being of the profession or trade alleged.—See also 61st section of the late act.

In actions for an escape, it will operate as a denial of the neglect or default of the sheriff or his officers, but not of the debt, judgment, or preliminary proceedings.

In actions on the case against a carrier, the plea of not guilty will operate as a denial of the loss or damage, but not of the receipt of the goods by the defendant as a carrier for hire, or of the purpose for which they were received.

All matters in confession and avoidance must be pleaded specially, as in actions of assumpsit.—General Rules, Hilary Term, 4 Will. IV.

4. Plea of Right of Way.

That the defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof for twenty years before this suit enjoyed as of right and without interruption a way on foot and with cattle from a public highway over the said land of the plaintiff to the said land of the defendant, and from the said land of the defendant over the said land of the plaintiff to the said public highway, at all times of the year, for the more convenient occupation of the said land of the defendant, and that the alleged trespass was a use by the defendant of the said way.

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5. Plea of Right of Common.

That the defendant at the time of the alleged trespass was possessed of land, the occupiers whereof for thirty years before this suit enjoyed as of right and without interruption common of pasture over the said land of the plaintiff for all their cattle levant and couchant upon the said land of the defendant, at all times of the year as to the said land of the defendant appertaining, and that the alleged trespass was a use by the defendant of the said right of common.

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6. Plea of Non-detinet (*b*).

That he does not detain the said goods and chattels as alleged.

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7. Plea traversing the Plaintiff's Property in Goods and Chattels.

That the goods and chattels are not, nor are nor is any or either of them, the plaintiff's, as alleged.

(*b*) This plea operates as a denial of the detention of the goods by the defendant, but not of the plaintiff's property therein, and no other defence than such denial will be admitted under this plea; see Reg. Gen. Hil. T. 4 W. 4.

SECTION IV.

PLEAS OF DEFENCES ARISING AFTER THE COMMENCEMENT OF THE ACTION, AND PLEAS *PUIS DARREIN CONTINUANCE* (*a*).

I. Plea of Defence since the Commencement of the Action (*b*).

The defendant, by his attorney [*or* "in person"], says that after the commencement of this action, (that is to say) on the day of [*here state the defence.*]

2. Plea *Puis darrein continuance.*

The defendant, by his attorney [*or* "in person"], says after the last pleading, (that is to say) on the day of [*here state the defence*].

(*a*) The 68th and 69th sections enact that any defence arising after the commencement of any action shall be pleaded according to the fact, without any formal commencement or conclusion; and any plea which does not state whether the defence therein set up arose before or after action shall be deemed to be a plea of matter arising before action; and that in cases in which a plea puis darrein continuance has heretofore been pleadable in banc or at nisi prius, the same defence may be pleaded, with an allegation that the matter arose after the last pleading; and such plea may, when necessary, be pleaded at nisi prius, between the tenth of August and twenty-fourth of October; but no such plea shall be allowed unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea, or unless the court or a judge shall otherwise order.

(*b*) This will be the proper commencement when the defence arises before any other plea has been pleaded to the action, and the next form will apply where the defence arises after the defendant has pleaded.

3. Affidavit in support of last Plea.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

Between A. B., plaintiff,
and
C. D., defendant.

C. D., of , maketh oath and saith that the matter of the annexed plea arose within eight days next before the pleading of such plea.

Sworn, &c.

SECTION V.

REPLICATIONS (*a*).

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1. Joinder of Issue.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]
The day of in the year of our Lord 18 .

A. B. } The plaintiff takes issue upon the defendant's first,
~~&c.~~ } second, &c. pleas.
C. D. }

(*a*) The 66th section of the Common Law Procedure Act, 1852, enacts, that it shall not be necessary in any replication or subsequent pleading to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment. And the 77th section enacts, that the plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or admitting some part or parts thereof to deny all the rest, or to deny any one or more allegations. The 78th enacts that a defendant shall be at liberty in like manner to deny the whole or part of a replication or subsequent pleading of the plaintiff. And the 79th enacts, that either party may plead in answer to the plea or subsequent pleading of his adversary that he joins issue thereon, which joinder of issue may be as follows, or to the like effect:

"The plaintiff joins issue upon the defendant's first [*&c., specifying what or what part*] plea."

"The defendant joins issue upon the plaintiff's replication to the first [*&c., specifying what*] plea."

and such form of joinder of issue shall be deemed to be a denial of the substance of the plea, or other subsequent pleading, and an issue thereon, and in all cases where the plaintiff's pleading is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant.

2. Commencement of Replication to a Plea containing new Matter.

The plaintiff as to the second plea says, &c.

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3. To Plea of Release, Denial of Deed.

That the alleged release is not the plaintiff's deed.

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4. To the like, that it was procured by Fraud.

That the alleged release was procured by the fraud of the defendant.

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5. To Plea of Set-off, Statute of Limitations.

The plaintiff says that the alleged set-off did not accrue within six years before this suit.

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6. To Plea that Plaintiff committed the first Assault —Replication that Defendant was trespassing on Plaintiff's Premises, and that Plaintiff assaulted him to remove him.

That the plaintiff was possessed of land whereon the defendant was trespassing and doing damage, whereupon the plaintiff requested the defendant to leave the said land, which the defendant refused to do, and thereupon the plaintiff gently laid his hands on the defendant, in order to remove him, doing no more than was necessary for that purpose, which is the alleged first assault by the plaintiff.

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7. To Plea of Right of Way, Traverse of User for Twenty Years.

That the occupiers of the said land did not for twenty years before this suit enjoy as of right and without interruption the alleged way.

8. To Plea of Payment of Money into Court—Replication that Plaintiff has sustained greater Damage (*b*).

That the said sum is not sufficient to satisfy the claim of the plaintiff in respect of the matter to which the said plea is pleaded.

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9. To the like, Acceptance in Satisfaction (*b*).

The plaintiff accepts the said sum of £ in full satisfaction and discharge of the cause of action in respect of which it is paid in.

(*b*) The 73rd section of the Common Law Procedure Act, 1852, enacts, that the plaintiff, after the delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and in case of non-payment thereof within forty-eight hours to sign judgment for his costs of suit so taxed, or the plaintiff may reply that the sum paid into court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded, and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

SECTION VI.

NEW ASSIGNMENT (*a*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of , in the year of our Lord 18 .

A. B. *v.* C. D. } The plaintiff as to the and pleas says that he sues not for the trespasses therein admitted, but for trespasses committed by the defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions, and for other purposes than those referred to in the said pleas.

[*If the plaintiff replies and new assigns, the new assignment may be as follows*]:

And the plaintiff as to the and pleas further says that he sues not only for the trespasses in those pleas admitted, but also for, &c.

[*If the plaintiff replies and new assigns to some of the*

(*a*) The 87th section of the Common Law Procedure Act, 1852, enacts, that one new assignment only shall be pleaded to any number of pleas to the same causes of action, and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify, or for an excess over and above what all the defences set up in such pleas justify, or both. And the 88th enacts, that no plea which has already been pleaded to the declaration shall be pleaded to such new assignment, except a plea in denial, unless by leave of the court or a judge, and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.

pleas, and new assigns only to the other, the form may be as follows]:

And the plaintiff as to the and pleas further says that he sues not for the trespasses in the pleas [*the pleas not replied to*] admitted, but for the trespasses in the pleas [*the pleas replied to*] admitted, and also for, &c.

SECTION VII.

REJOINDER (*a*).

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of , in the year of our Lord 18 .

C. D. ats. A. B. } The defendant joins issue on the plaintiff's replication to the first, &c. [*specifying what*] plea.

(*a*) The 79th section enacts, that either party may plead, in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect:

"The plaintiff joins issue upon the defendant's 1st [*&c., specifying what or what part*] plea:"

"The defendant joins issue upon the plaintiff's replication to the 1st [*&c., specifying what*] plea:"

and such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the plaintiff's pleading is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant. The defendant may deny the whole or part of the replication; see sect. 78 of the Common Law Procedure Act.

SECTION VIII.

DEMURRERS (*a*).

1. Demurrer to Declaration.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

C. D. ats. A. B. } The defendant, by his attorney [*or* "in person"] says that the declaration is bad in substance.

The matter of law intended to be argued is, that [*here state the objections to the declaration*].

(*a*) The 89th section of the Common Law Procedure Act, 1852, enacts, that the form of a demurrer, except in the cases herein specifically provided for, shall be as follows, or to the like effect:

"The defendant, by his attorney [*or* 'in person,' *&c. or* 'plaintiff'], says that the declaration [*or* 'plea,' *&c.*] is bad in substance:

and in the margin thereof some substantial matter of law intended to be argued shall be stated, and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside by the court or a judge, and leave may be given to sign judgment as for want of a plea, and the form of a joinder in demurrer shall be as follows, or to the like effect:

"The plaintiff [*or* defendant] says that the declaration [*or* plea, *&c.*] is good in substance."

2. Demurrer to a Plea.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

A. B. *v.* C. D. } The plaintiff says that the said plea is bad in substance.

The matter of law intended to be argued is, that [*here state the objections to the plea.*]

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3. Joinder in Demurrer.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas"].

The day of , in the year of our Lord 18 .

The plaintiff [*or* "defendant"] says that the declaration [*or* "plea, &c."] is good in substance.

SECTION IX.

PROCEEDINGS IN ERROR (*a*).

1. Note of Error, to be delivered to one of the Masters of the Court.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 . [*The day of lodging note of error.*]

A. B. and C. D.

The plaintiff [*or* "defendant"] says that there is error in law in the record and proceedings in this action, and the

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(*a*) With respect to proceedings in error the Common Law Procedure Act enacts—

Error to be brought within Six Years.

That no judgment in any cause shall be reversed or avoided for any error or defect therein, unless error be commenced, or brought and prosecuted with effect, within six years after such judgment signed or entered of record.—Sect. 146.

Proviso for Disabilities.

That if any person that is or shall be entitled to bring error as aforesaid is or shall be, at the time of such title accrued, within the age of twenty-one years, feme covert, *non compos mentis*, or beyond the seas, then such person shall be at liberty to bring error as aforesaid, so as such person commences, or brings and prosecutes the same with effect, within six years after coming to or being of full age, discovert, of sound memory, or return from beyond the seas; and if the opposite party shall, at the time of the judgment signed or entered of record, be beyond the seas, then error may be brought, provided the proceedings be commenced and prosecuted with effect within six years after the return of such party from beyond seas.—Sect. 147.

Writ of Error abolished.

A writ of error thall not be necessary or used in any cause, and

defendant [*or* "plaintiff"] says that there is no error therein.

(Signed) A. B., plaintiff,
[*or* "C. D., defendant,"]
[*or* "E. F., attorney for plaintiff" *or* "defendant."]

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the proceeding to error shall be a step in the cause, and shall be taken in manner hereinafter mentioned, but nothing in this act contained shall invalidate any proceedings already taken or to be taken by reason of any writ of error issued before the commencement of this act.—Sect. 148.

Error in Law, how brought.

That either party alleging error in law may deliver to one of the masters of the court a memorandum in writing, in the above form, No. 1, or to the like effect, entitled in the court and cause, and signed by the party or his attorney, alleging that there is error in law in the record and proceedings; whereupon the Master shall file such memorandum, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note, together with a statement of the grounds of error intended to be argued, may be served on the opposite party or his attorney.—Sect. 149.

Error not Supersedeas till Service of the Copy of the Note and Grounds of Error.

That proceedings in error in law shall be deemed a supersedeas of execution from the time of the service of the copy of such note, together with the statement of the grounds of error intended to be argued, until default in putting in bail, or an affirmance of the judgment, or discontinuance of the proceedings in error, or until the proceedings in error shall be otherwise disposed of without a reversal of the judgment; provided always, that if the grounds of error shall appear to be frivolous, the court or a judge upon summons may order execution to issue.—Sect. 150.

Bail in Error.

That upon any judgment hereafter to be given in any of the said superior courts of common law in any action, execution shall not be stayed or delayed by proceedings in error, or supersedeas thereupon, without the special order of the court or a judge, unless the person in whose name such proceedings in error be brought, with two, or, by leave of the court or a judge, more than two sufficient sureties, such as the court (wherein such judgment is or shall be given) or a judge shall allow of, shall within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the party for whom any such judgment is or shall be given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said judgment (except in case of a penalty, and in case of a penalty in double the sum really due, and

2. Suggestion of Error to be entered on Judgment Roll.

The day of in the year of our Lord 18 . [*The day of making the entry on the roll.*]

The plaintiff [*or* "defendant"] says that there is error in

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double the costs), to prosecute the proceedings in error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the proceedings in error be discontinued by the plaintiff therein), all and singular the sum or sums of money, and costs adjudged or to be adjudged upon the former judgment, and all costs and damages to be also awarded for the delaying of execution, and shall give notice thereof to the defendant in error, or his attorney.—Sect. 151.

Suggestion instead of Assignment of and Joinder in Error.

That the assignment of and joinder in error in law shall not be necessary or used, and, instead thereof, a suggestion to the effect that error is alleged by the one party and denied by the other, may be entered on the judgment roll in the above form, No. 2, or to the like effect: provided that in case the defendant in error intends to rely upon the proceeding in error being barred by lapse of time, or by release of error, or other like matter of fact, he may give four days written notice to the plaintiff in error to assign error as heretofore, instead of entering the suggestion; and he shall, within eight days, plead thereto the bar by lapse of time, or release of error, or other like matter of fact; and thereupon such proceedings may be had as heretofore.—Sect. 152.

Roll to be made up and Suggestion entered by Plaintiff in Error.

That the roll shall be made up, and the suggestion last aforesaid entered by the plaintiff in error within ten days after the service of the note of the receipt of the memorandum alleging error, or within such other time as the court or a judge may order; and in default thereof, or of assignment of error in cases where an assignment is required, the defendant in error, his executors or administrators, shall be at liberty to sign judgment of non-pros.—Sect. 153.

Error brought by one of several Persons against whom Judgment has been given.

That in case error be brought upon a judgment given against several persons, and one or some only shall proceed in error, the memorandum alleging error, and the note of the receipt of such memorandum, shall state the names of the persons by whom the proceedings are taken; and in case the other persons against whom judgment has been given decline to join in the proceedings in error, the same may be continued, and the suggestion last aforesaid entered, stating the persons by whom the proceedings are brought, without any summons and severance, or if such other persons elect to join,

the above record and proceedings, and the defendant [*or* "plaintiff"] says there is no error therein.

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3. Statement of Grounds of Error.

In the Queen's Bench ["Common Pleas," *or* "Exchequer of Pleas."]

The day of in the year of our Lord 18 . [*The day of lodging note of error.*]

A. B. and C. D. in error.

The plaintiff [*or* "defendant"] says that there is error in fact in the record and proceedings in this action in the particulars specified in the affidavit hereunto annexed.

(Signed) A. B., plaintiff,
[*or* "C. D., defendant,"]
[*or* "E. F., attorney for plaintiff" *or* "defendant."]

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then the suggestion shall state them to be, and they shall be deemed as plaintiffs in error, although not mentioned as such in the previous proceedings.—Sect. 154.

Judgment Roll to be brought into Court instead of Transcript.

That upon such suggestion of error alleged and denied being entered, the cause may be set down for argument in the court of error in the manner heretofore used; and the judgment roll shall, without any writ or return, be brought by the master into the court of error in the Exchequer Chamber, before the justices, or justices and barons, as the case may be, of the other two superior courts of common law, on the day of its sitting, at such time as the judges shall appoint, either in term or in vacation; or if the proceedings in error be before the high court of parliament, then before the high court of parliament, before or at the time of its sitting; and the court of error shall and may thereupon review the proceedings, and give judgment as they shall be advised thereon; and such proceedings and judgment, as altered or affirmed, shall be entered on the original record; and such further proceedings as may be necessary thereon shall be awarded by the court in which the original judgment was given.—Sect. 155.

Jurisdiction of Courts of Error over the Proceedings.

That courts of error shall have power to quash the proceedings in error in all cases in which error does not lie, or where they are taken against good faith, or in any case in which proceedings in error might heretofore have been quashed by such courts; and such courts shall

in all respects have such jurisdiction over the proceedings as over the proceedings in error commenced by writ of error.—Sect. 156.

Court of Error to have like Powers with Court below.

That courts of error shall in all cases have power to give such judgment and award such process as the court, from which error is brought, ought to have done, without regard to the party alleging error.—Sect. 157.

Proceedings in Error in Fact.

That either party alleging error in fact may deliver to one of the masters of the court a memorandum in writing, in the above form, No. 3, or to the like effect, intituled in the court and cause, and signed by the party or his attorney, alleging that there is error in fact in the proceedings, together with an affidavit of the matter of fact in which the alleged error consists; whereupon the master shall file such memorandum and affidavit, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note and affidavit may be served on the opposite party or his attorney; and such service shall have the same effect, and the same proceedings may be had thereafter as heretofore had after the service of the rule for allowance of a writ of error in fact.—Sect. 158.

Plaintiff may discontinue Proceedings in Error.

That the plaintiff in error, whether in fact or law, shall be at liberty to discontinue his proceedings by giving to the defendant in error a notice, headed in the court and cause, and signed by the plaintiff in error or his attorney, stating that he discontinues such proceedings; and thereupon the defendant in error may sign judgment for the costs of, and occasioned by, the proceedings in error, and may proceed upon the judgment on which the error was brought.—Sect. 159.

Defendant may confess Error, and consent to Reversal of Judgment.

That the defendant in error, whether in fact or law, shall be at liberty to confess error, and consent to the reversal of the judgment, by giving to the plaintiff in error a notice, headed in the court and cause, and signed by the defendant in error or his attorney, stating that he confesses the error, and consents to the reversal of the judgment; and thereupon the plaintiff in error shall be entitled to and may forthwith sign a judgment of reversal.—Sect. 160.

Death of Plaintiff in Error no Abatement.

That the death of a plaintiff in error after service of the note of the receipt of the memorandum alleging error, with a statement of the grounds of error, shall not cause the proceedings to abate, but they may be continued as hereinafter mentioned.—Sect. 161.

Providing for Death of one of several Plaintiffs in Error.

That in case of the death of one of several plaintiffs in error, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may be thereupon continued at the suit of, and against the surviving plaintiff in error, as if he were the sole plaintiff.—Sect. 162.

Proceedings upon Death of sole Plaintiff or of all the Plaintiffs in Error.

That in case of the death of a sole plaintiff or of several plaintiffs in error, the legal representative of such plaintiff or of the surviving plaintiff may, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may thereupon be continued at the suit of, and against such legal representative as the plaintiff in error; and, if no such suggestion shall be made, the defendant in error may proceed to an affirmance of the judgment according to the practice of the court, or take such other proceedings thereupon as he may be entitled to.—Sect. 163.

Death of Defendant in Error no Abatement.

That the death of a defendant in error shall not cause the proceedings to abate, but they may be continued as hereinafter mentioned.—Sect. 164.

Proceedings upon Death of one of several Defendants in Error.

That in case of the death of one of several defendants in error, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the proceedings may be continued against the surviving defendant.—Sect. 165.

Proceedings upon Death of sole Defendant or of all the Defendants in Error.

That in case of the death of a sole defendant or of all the defendants in error, the plaintiff in error may proceed upon giving ten days notice of the proceedings in error, and of his intention to continue the same to the representatives of the deceased defendants, or if no such notice can be given, then by leave of the court or a judge, upon giving such notice to the parties interested as he or they may direct.—Sect. 166.

Marriage not to abate Proceedings in Error.

That the marriage of a woman, plaintiff or defendant in error, shall not abate the proceedings in error, but the same may be continued in like manner as hereinbefore provided with reference to the continuance of an action after marriage.—Sect. 167.

SECTION X.

EJECTMENT (*a*).

1. Form of Writ.

Victoria, &c., to X., Y., Z., and all persons entitled to defend the possession of [*describe the property with*

(*a*) With respect to the action of ejectment, the recent statute enacts:

Ejectment to be brought by Writ.

That instead of the former proceeding by ejectment, a writ shall be issued, directed to the persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the writ with reasonable certainty.—Sect. 168.

Form and Duration of Writ.

That the writ shall state the names of all the persons in whom the title is alleged to be, and command the persons, to whom it is directed, to appear, within sixteen days after service thereof, in the court from which it is issued, to defend the possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession; and the writ shall bear teste of the day on which it is issued, and shall be in force for three months, and shall be in the above form, or to the like effect; and the name and abode of the attorney issuing the same, or, if no attorney, the name and residence of the party shall be indorsed thereon, in like manner as thereinbefore enacted with reference to the indorsements on a writ of summons in a personal action; and the same proceedings may be had to ascertain whether the writ was issued by the authority of the attorney whose name was indorsed thereon, and who and what the claimants are, and their abode, and as to staying the proceedings upon writs issued without authority, as in the case of writs in personal actions, as to which see *ante*.—Sect. 169.

Service of Writ.

That the writ shall be served in the same manner as an ejectment had theretofore been served, or in such manner as the court or a judge shall order, and in case of vacant possession, by posting a copy thereof upon the door of the dwelling-house or other conspicuous part of the property.—Sect. 170.

reasonable certainty] in the parish of in the county of , to the possession whereof A. B. and C., some or one of them, claim to be [*or* "to have been on and since the day of A.D. "] entitled, and to eject all other persons therefrom: These are to will and command you, or such of you as deny the alleged title, within sixteen days after service hereof, to appear in our court of to defend the said property, or such part thereof as you may be advised; in default whereof judgment may be signed, and you turned out of possession.

Witness, &c.

Appearance of Persons named in the Writ.

That the persons named as defendants in such writ, or either of them, shall be allowed to appear within the time appointed.—Sect. 171.

Appearance of Persons not named.

That any other person not named in such writ shall, by leave of the court or a judge, be allowed to appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.—Sect. 172.

Appearance and Defence by Landlord.

That any person appearing to defend as landlord in respect of property, whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord; and such person shall be at liberty to set up any defence which a landlord appearing in an action of ejectment had theretofore been allowed to set up, and no other.—Sect. 173.

Notice to defend for Part only.

That any person appearing to such writ shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in a notice intituled in the court and cause, and signed by the party appearing or his attorney; such notice to be served within four days after appearance upon the attorney whose name is indorsed on the writ, if any, and if none, then to be filed in the master's office; and an appearance without such notice confining the defence to part, shall be deemed an appearance to defend for the whole.—Sect. 174.

Want of Certainty cured by Particulars.

That want of "reasonable certainty" in the description of the property, or part of it, in the writ or notice, shall not nullify them, but shall only be ground for an application to a judge for better particulars of the land claimed or defended, which a judge shall have power to give in all cases.—Sect. 175.

Defence by Persons not in Possession.

That the court or a judge shall have power to strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants.—Sect. 176.

2. Judgment in Ejectment for the whole in case of Non-Appearance (*b*).

In the Queen's Bench.

The day of , A.D. 18 .

[*Date of writ.*]

Lancashire } On the day and year above written, a writ
to wit. } of our Lady the Queen issued forth of this court in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and no appearance has been entered or defence made to the said writ: Therefore it is considered that the said [*here insert the names of the persons in whom title is alleged in the writ*] do recover possession of the land in the said writ mentioned, with the appurtenances.

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3. The like, as to Part (*b*).

In the Queen's Bench.

On the day of A.D. 18 .

Cumberland } On the day and year above written, a writ
to wit. } of our Lady the Queen issued forth of this court in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and C. D. has, on the day of appeared by , his attorney [*or* "in person"], to the said writ, and has defended for a part of the land in the writ mentioned; that is to say [*here state the part*], and no appearance has been entered or defence made to the said writ, except as to the said part: Therefore it is considered that the said A. B. [*the claimant*] do recover possession of the land in the said writ

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(*b*) *Judgment for Default of Appearance or Defence.*

That in case no appearance shall be entered into within the time appointed, or if an appearance be entered, but the defence be limited to part only, the plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply; which judgment, if for all, may be in the above form, No. 2, or to the like effect, and if for part, may be in the above form, No. 3, or to the like effect —Sect. 177.

mentioned, except the said part, with the appurtenances, and that he have execution thereof forthwith; and as to the rest, let a jury come, &c.

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4. Form of Issue (*c*).

In the Queen's Bench.

On the day of , A.D. 18 .

Cumberland } On the day and year above written, a writ
to wit. } of our Lady the Queen issued forth of this court in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and C. D. has, on the day of appeared by , his attorney [*or* "in person"], to the said writ, and defended for the whole of the land therein mentioned: Therefore let a jury come, &c.

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5. Form of Postea or Entry of Verdict (*d*).

Afterwards on the day of A.D. , before and , justices of our Lady the Queen

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(*c*) *Issue how made up.*

That in case an appearance shall be entered, an issue may at once be made up, without any pleadings, by the claimants or their attorney, setting forth the writ, and stating the fact of the appearance, with its date, and the notice limiting the defence, if any, of each of the persons appearing, so that it may appear for what defence is made, and directing the sheriff to summon a jury; and such issue, in case defence is made for the whole, may be in the above form, No. 4, or to the like effect, and in case defence is made for part, may be in the above form, No. 3, or to the like effect.—Sect. 178.

Special Case may be stated.

That by consent of the parties, and by leave of a judge, a special case may be stated according to the practice heretofore used.—Sect. 179.

(*d*) *Trial of Issue.*

That the claimants may, if no special case be agreed to, proceed to trial upon the issue, in the same manner as in other actions; and the particulars of the claim and defence, if any, or copies thereof, shall be annexed to the record by the claimants: and the question at the trial shall, except in the cases hereafter mentioned, be, whether the statement in the writ of the title of the claimants is true or false, and, if true, then which of the claimants is entitled, and whether to the whole or part, and if to part, then to which part of the property

assigned to take the assizes in and for the within county, come the parties within mentioned; and a jury of the said county being sworn to try the matters in question between

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in question; and the entry of the verdict may be made in the above form, No. 5, or to the like effect, with such modifications as may be necessary to meet the facts.—Sect. 180.

Verdict when Title appears to have expired before Trial.

That in case the title of the claimant shall appear to have existed as alleged in the writ, and at the time of service thereof, but it shall also appear to have expired before the time of trial, the claimant shall, notwithstanding, be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the writ, and to a judgment for his costs of suit.—Sect. 181.

Trial may be ordered to take place in any County.

That the court or a judge may, on the application of either party, order that the trial shall take place in any county or place other than that in which the venue is laid; and such order being suggested on the record, the trial may be had accordingly.—Sect. 182.

Nonappearance at Trial.

That if the defendant appears, and the claimant does not appear at the trial, the claimant shall be nonsuited; and if the claimant appears, and the defendant does not appear, the claimant shall be entitled to recover as theretofore, without any proof of his title.—Sect. 183.

Special Verdict, and Bill of Exceptions.

That the jury may find a special verdict, or either party may tender a bill of exceptions.—Sect. 184.

Judgment upon Finding for Claimant.

That upon a finding for the claimant, judgment may be signed, and execution issue for the recovery of possession of the property, or such part thereof as the jury shall find the claimant entitled to, and for costs, within such time, not exceeding the fifth day in term after the verdict, as the court or judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in term after the verdict, or within fourteen days after such verdict, whichever shall first happen.—Sect. 185.

Judgment upon Finding for Defendant.

That upon a finding for the defendants, or any of them, judgment may be signed, and execution issue for costs against the claimants named in the writ, within such time, not exceeding the fifth day in term after the verdict, as the court or judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in term after the verdict, or within fourteen days after such verdict, whichever shall first happen.—Sect. 186.

Execution for Recovery of Possession and Costs may be joint or separate.

That upon any judgment in ejectment for recovery of possession and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the claimant.—Sect. 187.

the said parties, upon their oath say, that A. B. [*the claimant*] within mentioned, on the day of , A.D. , was and still is entitled to the possession of the land within mentioned, as in the writ alleged: Therefore, &c.

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6. Form of Judgment for Costs on Discontinuance (*e*).

In the Queen's Bench.

On the day of , 18 .

[*Date of writ.*]

Lancashire } On the day and year above written, a writ
to wit. } of our Lady the Queen issued forth of this court in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and

Defence by Joint Tenants, Tenants in Common or Coparceners.

That in case of such an action being brought by some or one of several persons entitled as joint tenants, tenants in common or coparceners, any joint tenant, tenant in common or coparcener in possession may, at the time of appearance, or within four days after, give notice in the same form as in the notice of a limited defence, that he or she defends as such, and admits the right of the claimant to an undivided share of the property (stating what share), but denies any actual ouster of him from the property, and may, within the same time, file an affidavit stating with reasonable certainty that he or she is such joint tenant, tenant in common or coparcener, and the share of such property to which he or she is entitled, and that he or she has not ousted the claimant; and such notice shall be entered in the issue in the same manner as the notice limiting the defence, and upon the trial of such an issue the additional question of whether an actual ouster has taken place shall be tried.—Sect. 188.

Trial and Judgment in Ejectment against Joint Tenants, Tenants in Common and Coparceners.

That upon the trial of such issue as last aforesaid, if it shall be found that the defendant is joint tenant, tenant in common, or coparcener with the claimant, then the question whether an actual ouster has taken place shall be tried, and unless such actual ouster shall be proved the defendant shall be entitled to judgment and costs; but if it shall be found either that the defendant is not such joint tenant, tenant in common or coparcener, or that an actual ouster has taken place, then the claimant shall be entitled to such judgment for the recovery of possession and costs.—Sect. 189.

Action not to abate by Death.

That the death of a claimant or defendant shall not cause the action to abate, but it may be continued as thereinafter mentioned. As to proceedings in case of the death of the claimant or defendant, see sections 191 to 199 of the Common Law Procedure Act.

(*e*) *Claimant may discontinue by Notice.*

That the claimant in ejectment shall be at liberty at any time to

C. D. has, on the day of , appeared by , his attorney [*or* "in person"], to the said writ, and A. B. has discontinued the action: Therefore it is considered that the said C. D. be acquitted, and that he recover against the said A. B. £ for his costs of defence.

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7. Form of Judgment for not proceeding to Trial (*f*).

In the Queen's Bench.

The day of 18 .

[*Date of writ.*]

Lancashire } On the day and year above written, a writ
to wit. } of our Lady the Queen issued forth of this court in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and C. D. has, on the day of , appeared by , his attorney, [*or* "in person"], to the said writ, and A. B. has failed to proceed to trial, although duly required so to do: Therefore it is considered that the said

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discontinue the action as to one or more of the defendants, by giving to the defendant or his attorney a notice headed in the court and cause, and signed by the claimant or his attorney, stating that he discontinues such action; and thereupon the defendant, to whom such notice is given, shall be entitled to and may forthwith sign judgment for costs in the above form No. 6, or to the like effect.—Sect. 200.

Discontinuance of Action by One of several Claimants.

That in case one of several claimants shall be desirous to discontinue, he may apply to the court or a judge to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as to the court or judge may seem fit, and the action shall thereupon proceed at the suit of the other claimants.—Sect. 201.

(*f*) *Judgment for not proceeding to Trial after Notice.*

That if after appearance entered the claimant, without going to trial, allow the time allowed for going to trial by the practice of the court in ordinary cases after issue joined to elapse, the defendant in ejectment may give twenty days notice to the claimant to proceed to trial at the sittings or assizes next after the expiration of the notice; and if the claimant afterwards neglects to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, and the time for going to trial shall not be extended by the court or a judge, the defendant may sign judgment in the above form No. 7, and recover the costs of defence.—Sect. 202.

C. D. be acquitted, and that he recover against the said A. B. £ for his costs of defence.

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8. Judgment on Confession (*g*).

In the Queen's Bench.

The day of , 18 .

[*Date of writ.*]

Lancashire } On the day and year above written, a writ
to wit. } of our Lady the Queen issued forth of this court in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and

(*g*) *Defendant may confess the Action.*

That a sole defendant or all the defendants in ejectment shall be at liberty to confess the action as to the whole or part of the property, by giving to such claimant a notice headed in the court and cause, and signed by the defendant or defendants, such signature to be attested by his or their attorney; and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession and costs in the above form No. 8, or to the like effect.—Sect. 203.

Confession by One of several Defendants defending separately for part.

That in case one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, shall be desirous of confessing the claimant's title to such portion, he may give a like notice to the claimant; and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.—Sect. 204.

Confession by One of several Defendants who defend for same Property.

That in case one of several defendants in ejectment, who defends separately in respect of property for which other defendants also defend, shall be desirous of confessing the claimant's title, he may give a like notice thereof; and thereupon the claimant shall be entitled to and may sign judgment against such defendant for the costs occasioned by his defence, and may proceed in the action against the other defendants to judgment and execution.—Sect. 205.

Formal Entry of Judgment on the Roll unnecessary for purposes of Execution.

That it shall not be necessary before issuing execution upon any judgment under the authority of this act to enter the proceedings upon any roll, but an incipitur thereof may be made upon paper, shortly describing the nature of the judgment according to the practice heretofore used, and judgment may thereupon be signed, and costs

C. D. has, on the day of , appeared by , his attorney, [*or* "in person"], to the said writ, and the said C. D. has confessed the said action [*or* "has confessed the said action as to part of the said land, that is to say," *here state the part*]: Therefore it is considered that the said A. B. do recover possession of the land in the said writ mentioned [*or* "of the said part of the said land"], with the appurtenances, and £ for costs.

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taxed, and execution issued, according to the practice heretofore used: provided nevertheless, that the proceedings may be entered upon the roll whenever the same may become necesssary for the purposes of evidence, or of bringing error, or the like.—Sect. 206.

Effect of Judgment.

That the effect of a judgment in an action of ejectment under this act shall be the same as that of a judgment in the action of ejectment heretofore used.—Sect. 207.

Error and Bail in Error in Ejectment.

That error may be brought in like manner as in other actions upon any judgment in ejectment, after a special verdict found by the jury, or a bill of exceptions, or by consent after a special case stated, but, except in the case of such consent as aforesaid, execution shall not be thereby stayed, unless the plaintiff in error shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the claimant, who shall have recovered judgment in such action of ejectment, in double the yearly value of the property, and double the costs recovered by the judgment, with condition, that if the judgment shall be affirmed by the court of error, or the proceedings in error be discontinued by the plaintiff therein, then the plaintiff in error shall pay such costs, damages and sum or sums of money as shall be awarded upon or after such judgment affirmed or discontinuance; and it shall be lawful for the court wherein execution ought to be granted upon such affirmation, or discontinuance, upon the application of the claimant, to issue a writ to inquire as well of the mesne profits as of the damage by any waste committed after the first judgment in ejectment, which writ may be tested on the day on which it shall issue, and be returnable immediately after the execution thereof; and upon the return thereof judgment shall be given, and execution awarded for such mesne profits and damages, and also for costs of suit.—Sect. 208.

Tenants to give notice of Ejectment to Landlord.

That every tenant to whom any writ in ejectment shall be delivered, or to whose knowledge it shall come, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises, demised or holden in the possession of such tenant, to the person of whom he holds, to be recovered by action in any court of common law having jurisdiction for the amount.—Sect. 209.

9. Judgment in Ejectment by Landlord against Tenant for not giving Bail pursuant to Notice (*h*).

In the Queen's Bench.

The day of , A. D. 18 .

[*Date of writ.*]

Yorkshire } On the day and year above written, a writ of
to wit. } our Lady the Queen issued forth of this court,

(*h*) *Proceedings in Ejectment by Landlord for Nonpayment of Rent.* That in all cases between landlord and tenant, as often as it shall happen that one half-year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re enter for the nonpayment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action in ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for nonappearance, if it shall be made appear to the court where the said action is depending, by affidavit, or be proved upon the trial in case the defendant appears, that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six months after such execution executed, then and in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing error for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment a verdict shall pass for the defendant, or the claimant shall be nonsuited therein, then and in every such case such defendant shall have and recover his costs; provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six months

with a notice thereunder written, the tenor of which writ and notice follows in these words; that is to say,

[*Here copy the writ and notice, which latter may be as follows:*

"Take notice, that you will be required, if ordered by the court or a judge, to give bail by yourself and two sufficient

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after such judgment obtained and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are and ought to be performed.—Sect. 210.

Lessee proceeding in Equity not to have Injunction or Relief without Payment of Rent and Costs.

That in case the said lessee, his assignee, or other person claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, proceed for relief in any court of equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he does or shall, within forty days next after a full and perfect answer shall be made by the claimant in such ejectment, bring into court and lodge with the proper officer such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much and no more as he shall really and bonâ fide, without fraud, deceit or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease, then the said lessee, or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lesssor or landlord held the said lands.—Sect. 211.

Tenant paying all Rent with Costs, Proceedings to cease.

That if the tenant or his assignee do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then and in such case all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee, his executors, administrators or assigns, shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold and enjoy the demised lands, according to the lease thereof made, without any new lease.—Sect. 212.

sureties, conditioned to pay the costs and damages which shall be recovered in this action."]

Ejectment by Landlord against Tenant holding over after Expiration of Term or Determination of Tenancy by Notice to quit.

That where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing any lands, tenements or hereditaments for any any term or number of years certain, or from year to year, shall have expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord shall thereupon proceed by action of ejectment for the recovery of possession, it shall be lawful for him, at the foot of the writ in ejectment, to address a notice to such tenant or person requiring him to find such bail, if ordered by the court or a judge, and for such purposes as are hereinafter next specified; and upon the appearance of the party on an affidavit of service of the writ and notice, it shall be lawful for the landlord producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, to move the court or apply by summons to a judge at chambers for a rule or summons for such tenant or person to show cause, within a time to be fixed by the court or judge on a consideration of the situation of the premises, why such tenant or person should not enter into a recognizance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimants in the action.

On Rule or Summons absolute, if Tenant shall not conform, Judgment to be for the Landlord.

That it shall be lawful for the court or judge upon cause shown, or upon affidavit of the service of the rule or summons in case no cause shall be shown, to make the same absolute in the whole or in part, and to order such tenant or person, within a time to be fixed, upon a consideration of all the circumstances, to find such bail, with such conditions and in such manner as shall be specified in the said rule or summons, or such part of the same so made absolute; and in case the party shall neglect or refuse so to do, and shall lay no ground to induce the court or judge to enlarge the time for obeying the same, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with shall be at liberty to sign judgment for recovery of possession and costs of suit in the above form, No. 9, or to the like effect.—Sect. 213.

And C. D. has appeared by , his attorney [*or* "in person"] to the said writ, and has been ordered to give

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On Trial of any Ejectment between Landlord and Tenant, Juries to give Damages for mesne Profits down to the Verdict, or to a day specified therein.

That wherever it shall appear on the trial of any ejectment, at the suit of a landlord against a tenant, that such tenant or his attorney hath been served with due notice of trial, the judge before whom such cause shall come on to be tried shall, whether the defendant shall appear upon such trial or not, permit the claimant on the trial, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment, to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein; and the jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter, both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits; and in such case the landlord shall have judgment within the time hereinbefore provided, not only for the recovery of possession and costs, but also for the mesne profits found by the jury: provided always, that nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict, or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment.—Sect. 214.

On Trials after Bail found, Judge shall not stay the Execution except by Consent, or on Tenant's finding Security.

That in all cases in which such security shall have been given as aforesaid, if upon the trial a verdict shall pass for the claimant, unless it shall appear to the judge before whom the same shall have been had that the finding of the jury was contrary to the evidence, or that the damages given were excessive, such judge shall not, except by consent, make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant shall actually find security, by the recognizance of himself and two sufficient sureties, in such reasonable sum as the judge shall direct, conditioned not to commit any waste, or act in the nature of waste, or other wilful damage, and not to sell or carry off any standing crops, hay, straw or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict shall have been given to the day on which execution shall finally be made upon the judgment, or the same be set aside, as the case may be.

Bail in Error to discharge such Security.

Provided always, that the recognizance last above mentioned shall immediately stand discharged and be of no effect, in case proceedings

bail, pursuant to the statute, and has failed so to do: Therefore it is considered that the said [*here insert the name of*

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in error shall be brought upon such judgment, and the plaintiff in error shall become bound in the manner hereinbefore provided.—Sect. 215.

Recognizances to be taken as other Recognizances of Bail; Actions on them limited.

That all recognizances and securities entered into as last aforesaid may and shall be taken respectively in such manner and by and before such persons as are provided and authorized in respect of recognizances of bail upon actions and suits depending in the court in which any such action of ejectment shall have been commenced; and the officer of the same court with whom recognizances of bail are filed shall file such recognizances and securities, for which respectively the sum of two shillings and sixpence, and no more, shall be paid; but no action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises, or any part thereof, shall actually have been delivered to the landlord.—Sect. 216.

Landlord to recover Possession of Lands, &c. after Service of Writ in Ejectment.

That in all actions of ejectment hereafter to be brought in any of her Majesty's courts at Westminster by any landlord against his tenant, or against any person claiming through or under such tenant, for the recovery of any lands or hereditament in any county, except London or Middlesex, where the tenancy shall expire, or the right of entry into or upon such lands or hereditaments shall accrue to such landlord, in or after Hilary or Trinity Terms respectively, it shall be lawful for the claimant in any such action, at any time within ten days after such tenancy shall expire, or right of entry accrue as aforesaid, to serve a writ in ejectment in the above form, No. 1, except that it shall command the persons to whom it is directed to appear within ten days after service thereof in the court in which such action may be brought; and the like proceedings shall be thereupon had as hereinbefore provided, save that it shall be sufficient to give at least six clear days' notice of trial to the defendant before the commission day of the assizes at which such ejectment is intended to be tried; and any defendant in such action may, at any time before the trial thereof, apply to a judge by summons to stay or set aside the proceedings, or to postpone the trial until the next assizes; and it shall be lawful for the judge, in his discretion, to make such order in the said cause as to him shall seem expedient.—Sect. 217.

Saving of former Remedies.

That nothing therein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases thereinbefore provided for, otherwise than thereinbefore expressly enacted.—Sect. 218

landlord] do recover possession of the land in the said writ mentioned, with the appurtenances, together with £ for costs of suit.

As to ejectment by mortgagee, see sect. 219, 220, 221 of the Common Law Procedure Act in Appendix.

SECTION XI.

SPECIAL CASE (*a*).

In the Queen's Bench.

The day of , in the year of our Lord 18 .

Yorkshire } Whereas A. B. has sued C. D., and
to wit. } affirms and denies.

[*Here state the question or questions of fact to be tried.*]

And it has been ordered by the Hon. Mr. Justice , according to "The Common Law Procedure Act, 1852,"

(*a*) For the determination of questions raised by consent of the parties without pleading, the following important provisions are made by the recent statute.

Questions of Fact may, after Writ issued, by Consent and Leave of a Judge, be raised without Pleadings.

Where the parties to an action are agreed as to the question or questions of fact to be decided between them, they may, after writ issued, and before judgment, by consent, and order of a judge (which order any judge shall have power to make, upon being satisfied that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried), proceed to the trial of any question or questions of fact without formal pleadings; and such question or questions may be stated for trial in an issue in the above form, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action; and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the court as in other actions.—Sect. 42.

Agreement may be entered into for the Payment of Money and Costs according to the Result of the Issue.

The parties may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, and which shall be embodied in the said or any subsequent order, that upon the finding of the jury in the affirmative or negative of such issue or issues, a sum of money fixed by the parties, o to be ascertained by the jury upon a question inserted in the issue for that purpose, shall be paid by one of such parties to the other of them, either with or without the costs of the action.—Sect. 43.

that the said question [*or* "questions"] shall be tried by a jury: Therefore let the same be tried accordingly.

Judgment to be entered according to the Agreement, and Execution issued forthwith, unless stayed.

Upon the finding of the jury in any such issue, judgment may be entered for such sum as shall be so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the court or a judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the verdict, or for a new trial.—Sect. 44.

Proceedings upon Issue may be recorded.

The proceedings upon such issue may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.—Sect. 45,

Questions of Law may be raised after Writ issued, by Consent, &c. without Pleading.

The parties may, after writ issued, and before judgment, by consent, and order of a judge, state any question or questions of law in a special case for the opinion of the court, without any pleadings.—Sect. 46.

Agreement as to Payment of Money and Costs, according to Judgment upon Special Case.

The parties may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, and which shall be embodied in the said or any subsequent order, that upon the judgment of the court being given in the affirmative or negative of the question or questions of law raised by such special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of such parties to the other of them, either with or without costs of the action; and the judgment of the court may be entered for such sum as shall be so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed by proceedings in error.—Sect. 47.

Costs to follow the Event, unless otherwise agreed.

In case no agreement shall be entered into as to the costs of such action, the costs shall follow the event, and be recovered by the successful party.—Sect. 48.

Special Case in Ejectment.

The 179th section enacts, that by consent of the parties and by leave of a judge a special case may be stated according to the practice heretofore used.

SECTION XII.

PROCEEDINGS FOR THE REVIVAL OF JUDGMENTS AND OTHER PROCEEDINGS BY OR AGAINST PERSONS NOT PARTIES TO THE RECORD (*a*).

1. Form of Rule or Summons where a Judgment Creditor applies for Execution against a Judgment Debtor.

[*Formal parts as at present.*]

C. D. show cause why A. B. [*or as the case may be*] should not be at liberty to enter a suggestion upon the roll in an action wherein the said A. B. was plaintiff and the said C. D. was defendant, and wherein the said A. B. ob-

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(*a*) With respect to proceedings for the revival of judgments and other proceedings by and against persons not parties to the record, the recent statute enacts as follows:—

Execution in six Years without Revival.

That during the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.—Sect. 128.

Judgment to be revived by Writ, or with Leave of Court or Judge, by Suggestion.

That in cases where it shall become necessary to revive a judgment by reason either of lapse of time or of a change, by death or otherwise, of the parties entitled or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned, or apply to the court or a judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the court that such party is entitled to have execution of the judgment and to issue execution thereupon; such leave to be granted by the court or a judge upon a rule to show cause or a summons, to be served according to the present practice, or in such other manner as such court or judge may direct, and which rule or summons may be in the above form No. 1, or to the like effect.—Sect. 129.

tained judgment for £ against the said C. D. on the day of , that it manifestly appears to the court that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay to the said A. B. the costs of this application, to be taxed.

[*Note.—The above form may be modified so as to meet the case of an application by or against the representative of a party to the judgment.*

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2. Form of Suggestion that the Judgment Creditor is entitled to Execution against the Judgment Debtor (*b*).

And now on the day of , it is suggested and manifestly appears to the court, that the said A. B. [*or* "C. D., as executor of the last will and testament of the said A. B., deceased," *or as the case may be*] is entitled to have execution of the judgment aforesaid against the said E. F. [*or* "against G. H., as executor of the last will and testament of the said E. F.," *or as the case may be*]: therefore it is considered by the court that the said A. B. [*or* "C. D., as such executor as aforesaid, *or as the case may be*] ought to have execution of the said judgment against the said E. F. [*or* "against G. H., as such executor as aforesaid," *or as the case may be*].

(*b*) *Proceedings upon Application for Suggestion to revive Judgment.* That upon such application, in case it manifestly appears that the party making the same is entitled to execution, the court or judge shall allow such suggestion as aforesaid to be entered in the above form, No. 2, or to the like effect, and execution to issue thereupon, and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the court or judge shall discharge the rule or dismiss the summons with or without costs: provided nevertheless, that in such last-mentioned case the party making such application shall be at liberty to proceed by writ of revivor or action upon the judgment. —Sect. 130.

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3. Form of Writ of Revivor (*c*).

Victoria, by the grace of God, &c., to E. F. of , greeting.

We command you that, within eight days after the service of this writ upon you, inclusive of the day of such service, you appear in our court of to show cause why A. B.

(*c*) *Writ of Revivor, and Proceedings thereon.*

That the writ of revivor shall be directed to the party called upon to show cause why execution should not be awarded, and shall bear teste on the day of its issuing; and after reciting the reason why such writ has become necessary, it shall call upon the party, to whom it is directed, to appear, within eight days after service thereof, in the court out of which it issues, to show cause why the party at whose instance such writ has been issued should not have execution against the party to whom such writ is directed, and it shall give notice that, in default of appearance, the party issuing such writ may proceed to execution; and such writ may be in the above form, No. 3, or to the like effect, and may be served in any county, and otherwise proceeded upon, whether in term or vacation, in the same manner as a writ of summons; and the venue in a declaration upon such writ may be laid in any county; and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action.—Sect. 131.

Writs of Scire Facias in other Cases to be tested, directed and proceeded upon in like Manner.

That all writs of *scire facias* issued out of any of the superior courts of law at Westminster against bail on a recognizance; *ad audiendum errores;* against members of a joint-stock company or other body, upon a judgment recorded against a public officer or other person sued as representing such company or body, or against such company or body itself; by or against a husband to have execution of a judgment for or against a wife; for restitution after a reversal in error; upon a suggestion of further breaches after judgment for any penal sum, pursuant to the statute passed in the session holden in the eighth and ninth years of the reign of King William the Third, intituled "An Act for the better preventing frivolous and vexatious Suits;" or for recovery of land taken under an *elegit, shall be tested, directed and proceeded upon in like manner as writs of revivor.*—Sect. 132.

Appearance to Writ of Revivor.

That notice in writing to the plaintiff, his attorney or agent, shall be sufficient appearance to a writ of revivor.—Sect. 133.

As to Issue of Writ of Revivor upon Judgment more than ten Years old.

That a writ of revivor to revive a judgment less than ten years old shall be allowed without any rule or order; if more than ten years old, not without a rule of court or a judge's order; nor, if more than fifteen, without a rule to show cause.—Sect. 134.

[*or* "C. D., as executor of the last will and testament of the said A. B., deceased," *or as the case may be*] should not have execution against you [*if against a representative, here insert* "as executor of the last will and testament of , deceased," *or as the case may be*] of a judgment whereby the said A. B. [*or as the case may be*], on the day of , in the said court recovered against you [*or as the case may be*] £ ; and take notice, that in default of your so doing the said A. B. [*or as the case may be*] may proceed to execution.

Witness, &c.

SECTION XIII.

PROCEEDINGS IN CASE OF DEATH, MARRIAGE OR BANKRUPTCY OF PARTIES (*a*).

1. Suggestion of Death of sole Plaintiff, pursuant to Sect. 137 of the Common Law Procedure Act, 1852.

And thereupon, to wit, on the day of , in the year of our Lord 18 .

[*Day of entering the suggestion.*]

A. B., by leave of the court [*or* "a judge"], for this pur-

(*a*) And with respect to the effect of death, marriage and bankruptcy upon the proceedings in the action, it is enacted as follows:—

Action not to abate by Death.

That the death of a plaintiff or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.—Sect. 135.

Proceedings in case of Death of one or more of several Plaintiffs or Defendants.

That if there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.—Sect. 136.

Proceeding in case of death of sole Plaintiff.

That in case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of such plaintiff may, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of deceased plaintiff, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion, as if such person were originally the plaintiff.—Sect. 137.

Proceedings upon Death of sole or sole surviving Defendant.

That in case of the death of a sole defendant or sole surviving de-

pose first obtained, suggests that on the day of , in the year of our Lord 18 [*date of death*],

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fendant, where the action survives, the plaintiff may make a suggestion, either in any of the pleadings, if the cause has not arrived at issue, or in a copy of the issue, if it has so arrived, of the death, and that a person named therein is the executor or administrator of the deceased; and may thereupon serve such executor or administrator with a copy of the writ and suggestion, and with a notice, signed by the plaintiff or his attorney, requiring such executor or administrator to appear within eight days after service of the notice, inclusive of the day of such service, and that in default of his so doing the plaintiff may sign judgment against him as such executor or administrator; and the same proceedings may be had and taken in case of nonappearance after such notice, as upon a writ against such executor or administrator in respect of the cause for which the action was brought; and in case no pleadings have taken place before the death, the suggestion shall form part of the declaration, and the declaration and suggestion may be served together, and the new defendant shall plead thereto at the same time; and in case the plaintiff shall have declared, but the defendant shall not have pleaded before the death, the new defendant shall plead at the same time to the declaration and suggestion; and in case the defendant shall have pleaded before the death, the new defendant shall be at liberty to plead to the suggestion, only by way of denial, or such plea as may be appropriate to and rendered necessary by his character of executor or administrator, unless, by leave of the court or a judge, he should be permitted to plead fresh matter in answer to the declaration; and in case the defendant shall have pleaded before the death, but the pleadings shall not have arrived at issue, the new defendant, besides pleading to the suggestion, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together, and in case the plaintiff shall recover, he shall be entitled to the like judgment in respect of the debt or sum sought to be recovered; and in respect of the costs prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, he shall be entitled to the like judgment as in an action originally commenced against the executor or administrator.—Sect. 138.

Death between Verdict and Judgment.

That the death of either party between the verdict and the judgment shall not hereafter be alleged for error, so as such judgment be entered within two terms after such verdict.—Sect. 139.

Proceedings in case of Death after Interlocutory, and before final Judgment.

That if the plaintiff in any action happen to die after an interlocutory judgment and before a final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff; and if the defendant die after such interlocutory judgment and before final judgment therein obtained, the

the said plaintiff died, and that he the said A. B. is the legal representative of the said plaintiff [*or* "defendant," *as the case may be*].

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said action shall not abate, if such action might be originally prosecuted or maintained against the executor or administrator of such defendant; and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators, shall and may have a writ of revivor, in the the form contained in the schedule (A.) to this act annexed, marked No. 9, or to the like effect, against the defendant, if living after such interlocutory judgment, or if he be dead, then against his executors or administrators, to show cause why damages in such action should not be assessed and recovered by him or them; and if such defendant, his executors or administrators, shall appear at the return of such writ, and not show or allege any matter sufficient to arrest the final judgment, or shall make default, a writ of inquiry of damages shall be thereupon awarded, or the amount, for which final judgment is to be signed, shall be referred to one of the masters, as herein-before provided; and upon the return of the writ, or delivery of the order with the amount indorsed thereon to the plaintiff, his executors or administrators, judgment final shall be given for the said plaintiff, his executors or administrators, prosecuting such writ of revivor, against such defendant, his executors or administrators respectively.—Sect. 140.

Marriage not to abate Action.

That the marriage of a woman plaintiff or defendant shall not cause the action to abate, but the action may notwithstanding be proceeded with to judgment; and such judgment may be executed against the wife alone, or, by suggestion or writ of revivor pursuant to this act, judgment may be obtained against the husband and wife, and execution issue thereon; and in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband without any writ of revivor or suggestion; and if in any such action the wife shall sue or defend by attorney appointed by her when sole, such attorney shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the attorney changed according to the practice of the court.—Sect. 141.

Bankruptcy and Insolvency of Plaintiff, when not to abate Action.

That the bankruptcy or insolvency of the plaintiff in any action, which the assignees might maintain for the benefit of the creditors, shall not be pleaded in bar to such action, unless the assignees shall decline to continue, and give security for the costs thereof, upon a judge's order to be obtained for that purpose, within such reasonable time as the judge may order, but the proceedings may be stayed until such election is made; and in case the assignees neglect or refuse to continue the action and give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy.—Sect. 142.

Action not to abate by Death of Claimant or Defendant in Ejectment.

With respect to the death of the claimant or defendant in an action

2. Suggestion of Death of sole Defendant, to be entered on the Pleadings before Issue or in a Copy of the Issue, pursuant to Sect. 138 of the same Statute.

And hereupon, to wit, on the day of , in the year of our Lord 18 [*day of entering suggestion*],

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of ejectment, the statute enacts that the death of a claimant or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.—Sect. 190.

Proceeding upon Death before Trial where Right survives.

That in case the right of the deceased claimant shall survive to another claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant; and if such a suggestion shall be made before the trial, then the claimant shall have a verdict and recover such judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.—Sect. 191.

Proceedings upon Death before Trial where Right does not survive.

That in case of the death before trial of one of several claimants, whose right does not survive to another or others of the claimants, where the legal representative of the deceased claimant shall not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant for such share of the property as he is entitled to, and costs.—Sect. 192.

Upon Death of One of several Claimants having obtained a Verdict.

That in case of a verdict for two or more claimants, if one of such claimants die before execution executed, the other claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for recovery of possession of the entirety of the property and the costs; but nothing herein contained shall affect the right of the legal representative of the deceased claimant, or the liability of the surviving claimant to such legal representative; and the entry and possession of such surviving claimant under such execution shall be considered as an entry and possession on behalf of such legal representative in respect of the share of the property to which he shall be entitled as such representative, and the court may direct possession to be delivered accordingly.—Sect. 193.

Proceedings in case of Death of Claimant, where Right does not survive.

That in case of the death of a sole claimant, or, before trial, of one of several claimants, whose right does not survive to another or others of the claimants, the legal representative of such claimant

the plaintiff suggests and gives the court here to understand and be informed that the said defendant died on the day of , in the year of our Lord 18 [*date of death*], and that C. D. is executor of the last will and testament of the said defendant [*or* "administrator of all and singular the goods and chattels which were of the said defendant at the time of his death, who died intestate"].

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may, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased claimant, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion, as hereinbefore provided with reference to a judgment for or against such claimant; and in case such suggestion in the case of a sole claimant be made after trial and before execution executed by delivery of possession thereupon, and such suggestion be denied by the defendant within eight days after notice thereof, or such further time as the court or a judge may allow, then such suggestion shall be tried; and if, upon the trial thereof, a verdict shall pass for the person making such suggestion, he shall be enfitled to such judgment as aforesaid for the recovery of possession, and for the costs of and occasioned by such suggestion; and in case of a verdict for the defendant, such defendant shall be entitled to such judgment as aforesaid for costs.—Sect. 194.

Proceedings upon Death of One of several joint Defendants.

That in case of the death, before or after judgment, of one of several defendants in ejectment, who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution. —Sect. 195.

Upon Death of all the Defendants in Ejectment before Trial.

That in case of the death of a sole defendant, or of all the defendants in ejectment, before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the claimants shall be entitled to judgment for recovery of possession of the property, unless some other person shall appear and defend within the time to be appointed for that purpose by the order of the court or a judge, to be made upon the application of the claimants; and it shall be lawful for the court or a judge, upon such suggestion being made and upon such application as aforesaid, to order that the claimants shall be at liberty to sign judgment within such time as the court or judge may think fit, unless the person then in possession, by himself or his tenant, or the legal representative of the deceased defendant, shall within such time appear and defend the action; and such order may be served in the same manner as the writ; and in case such person shall appear and

3. Suggestion of Death of one of several Plaintiffs or Defendants, pursuant to Sect. 136 of the same Statute.

And hereupon, to wit, on the day of , in the year of our Lord 18 [*day of entering the suggestion*], the said plaintiff [*or* "defendant"] A. B. suggests and gives the court here to understand and be informed that the said plaintiff [*or* "defendant"] C. D. died on the day of , in the year of our Lord 18 [*date of death*], and that he the said A. B. then survived him.

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4. Suggestion of Death of one of the Claimants in Ejectment where the Right survives, pursuant to Sect. 191 of the same Statute.

And hereupon, that is to say, on the day of , in the year of our Lord 18 [*day of entering suggestion*], the said A. B. suggests and gives the court here to under-

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defend the same, proceedings may be taken against such new defendant as if he had originally appeared and defended the action; and if no appearance be entered and defence made, then the claimant shall be at liberty to sign judgment pursuant to the order.—Sect. 196.

Upon Death of all Defendants in Ejectment after Verdict.

That in case of the death of a sole defendant or of all the defendants in ejectment after verdict, the claimant shall nevertheless be entitled to judgment as if no such death had taken place, and to proceed by execution for recovery of possession without suggestion or revivor, and to proceed for the recovery of the costs, in like manner as upon any other judgment for money, against the legal representatives of the deceased defendant or defendants.– Sect. 197.

Upon Death before Trial of Defendant in Ejectment, who defends separately for Part.

That in case of the death before trial of one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant, or the claimants may proceed against the surviving defendants in respect of the portion of the property for which they defend.—Sect. 198.

stand and be informed that the said C. D. died on the day of , in the year of our Lord 18 [*date of death*], and that he survived him.

Upon Death of Defendant defending separately for Property in respect of which others also defend.

That in case of the death before trial of one of several defendants in ejectment, who defends separately in respect of property for which surviving defendants also defend, it shall be lawful for the court or a judge at any time before the trial to allow the person at the time of the death in possession of the property, or the legal representative of the deceased defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative; and if no such application be made or leave granted, the claimant, suggesting the death in manner aforesaid, may proceed against the surviving defendant or defendants to judgment and execution.—Sect. 199.

APPENDIX.

COMMON LAW PROCEDURE ACT.

15 & 16 Vict. Cap. 76.

An Act to amend the Process, Practice and Mode of Pleading in the Superior Courts of Common Law at Westminster, and in the Superior Courts of the Counties Palatine of Lancaster and Durham.

[30th June, 1852.

Whereas the process, practice and mode of pleading in the superior courts of common law at Westminster may be rendered more simple and speedy: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Commencement of act.

1. The provisions of this act shall come into operation on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-two.

Writs for Commencement of Actions.

And with respect to the writs for the commencement of personal actions in the said courts against defendants, whether in or out of the jurisdiction of the courts, be it enacted as follows:

Personal actions, when defendant resides within the jurisdiction, to be commenced by writ of summons in Form, No. 1, of Schedule (A.).

2. All personal actions brought in her majesty's superior courts of common law where the defendant is residing or supposed to reside within the jurisdiction of the said courts, shall be commenced by writ of summons in the form contained in the Schedule (A.) to this act annexed, marked No. 1, and in every such writ and copy thereof the place and county of the residence or supposed residence of the party defendant, or wherein the defendant shall be or shall be supposed to be, shall be mentioned; and such writ shall be issued by any one of the officers of the said courts respectively by whom like process hath been heretofore issued from such court, or by such other officer as the court shall direct.

No form or cause of action to be mentioned in writ.

3. It shall not be necessary to mention any form or cause of action in any writ of summons, or in any notice of writ of summons, issued under the authority of this act.

Writ to state names of all defendants, and for only one action.

4. Every writ of summons shall contain the names of all the defendants, and shall not contain the name or names of any defendant or defendants in more actions than one.

Writ to be dated of day of issuing, and tested in name of chief or senior judge.

5. Every writ of summons shall bear date on the day on which the same shall be issued, and shall be tested in the name of the lord chief justice or lord chief baron of the court from which the same shall issue, or in case of a vacancy of such office, then in the name of a senior puisne judge of the said court.

Writ to be indorsed with name and abode of attorney, or a memorandum that writ has been sued by plaintiff in person.

6. Every writ of summons shall be indorsed with the name and place of abode of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the court in which the same is sued out, then also with the name and place of abode of the attorney of such court in whose name such writ shall be taken out; and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ; and in case no attorney shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff in person, mentioning the city, town or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's residence, if any such there be.

Attorney on demand to declare whether writ issued by his authority, and to declare name and abode of his client, if ordered.

If writ issued without authority of attorney proceedings to be stayed.

7. Every attorney whose name shall be indorsed on any writ issued by authority of this act, shall, on demand in writing, made by or on behalf of any defendant, declare forthwith whether such writ has been issued by him or with his authority or privity; and if he shall answer in the affirmative, then he shall also in case the court or a judge shall so order and direct, declare in writing, within a time to be allowed by such court or judge, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of the court from which such writ shall appear to have been issued; and if such attorney shall declare that the writ was not issued by him, or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the court or a judge.

Indorsement of debt and costs on writ and copy of writ for a debt, with notice that proceedings will be stayed on payment within four days.

8. Upon the writ and copy of any writ served for the payment of any debt, the amount of the debt shall be stated, and the amount of what the plaintiff's attorney claims for the costs of such writ, copy and service, and attendance to receive debt and costs, and it shall be further stated that upon payment thereof within four days to the plaintiff or his attorney, further proceedings will be stayed; which indorsement shall be written or printed in the following form or to the like effect:

"The plaintiff claims £ for debt, and £
"for costs, and if the amount thereof be paid to the
"plaintiff or to his attorney within four days from the
"service hereof further proceedings will be stayed."

But the defendant shall be at liberty, notwithstanding such payment, to have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation.

Concurrent writs may be issued.

9. The plaintiff in any such action may, at any time during six months from the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be provided and kept for that purpose at the offices of the masters of the said courts, and shall be impressed upon the writ by the proper officer of the court out of which the original writ issued: provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

From commencement of this act certain provisions of 2 Will. 4, c. 39, repealed.

10. From the time when this act shall commence and take effect, so much of a certain act of parliament passed in the second year of the reign of his late majesty King William the Fourth, intituled "An Act for Uniformity of Process in Personal Actions in his Majesty's Courts of Law at Westminster," as relates to the duration of writs, and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this act, and any proceedings taken or to be taken thereon.

Renewal of writs of summons to save the Statute of Limitation, and for other purposes.

11. No original writ of summons shall be in force for more than six months from the day of the date thereof, including the day of such date; but if any defendant therein named may not have been served therewith, the original or concurrent writ of summons may be renewed at any time before its expiration, for six months from the date of such renewal, and so from time to time during the currency of the renewed writ, by being marked with a seal, bearing the date of the day, month and year of such renewal, such seal to be provided and kept for that purpose at the offices of the masters of the said superior courts, and to be impressed upon the writ by the proper officer of the court out of which such writ issued, upon delivery to him by the plaintiff or his attorney of a præcipe in such form as has heretofore been required to be delivered upon the obtaining of an alias writ; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Renewal of writs issued before this act.

12. Where any writ of summons in any such action shall have been issued before, and shall be in force at, the commencement of this act, such writ may at any time before the expiration thereof be renewed under the provisions of and in the manner directed by this act; and where any writ, issued in continuation of a preceding writ according to the provisions of the said act of his late majesty King William the

Fourth, shall be in force and unexpired, or where one month next after the expiration thereof shall not have elapsed at the commencement of this act, such continuing writ may, without being returned *non est inventus*, or entered of record according to the provisions of the said act of his late majesty King William the Fourth, be filed in the office of the court within one month next after the expiration of such writ, or within twenty days after the commencement of this act; and the original writ of summons in such action may thereupon, but within the same period of one month next after the expiration of the continuing writ, or within twenty days after the commencement of this act, be renewed under the provisions of and in the manner directed by this act; and every such writ shall after such renewal have the same duration and effect for all purposes, and shall, if necessary, be subsequently renewed, in the same manner as if it had originally issued under the authority of this act.

Production of renewed writ evidence of commencement of action.

13. The production of a writ of summons purporting to be marked with the seal of the court, showing the same to have been renewed according to this act, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

Writ may be served in any county.

14. The writ of summons in any action may be served in any county.

Indorsement of service to be made.

15. The person serving the writ of summons shall and he is hereby required, within three days at least after such service, to indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of nonappearance, to proceed under this act; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

As to service of writ on corporation and inhabitants of hundreds and towns.

16. Every such writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and every such writ issued against the inhabitants of a hundred or other like district may be served on the high constable thereof, or any one of the high constables thereof; and every such writ issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place not being part of a hundred or other like district, on some peace officer thereof.

Proceedings where personal service cannot be effected, but defendant knows of the writ and evades service.

17. The service of the writ of summons, wherever it may be practicable, shall, as heretofore, be personal; but it shall be lawful for the plaintiff to apply from time to time, on affidavit, to the court out of which the writ of summons issued, or to a judge; and in case it shall appear to such court or judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto, it shall be lawful for such court or judge to order that the plaintiff be at liberty to

proceed as if personal service had been effected, subject to such conditions as to the court or judge may seem fit.

As to actions against British subjects residing out of the jurisdiction of superior courts.

18. In case any defendant, being a British subject, is residing out of the jurisdiction of the said superior courts, in any place except in Scotland or Ireland, it shall be lawful for the plaintiff to issue a writ of summons in the form contained in the schedule (A.) to this act annexed, marked No. 2, which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the said superior courts; and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for the court or judge, upon being satisfied by affidavit that there is a cause of action, which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction of the said courts, in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such court or judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case: provided always, that the plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in such action either before a jury upon a writ of inquiry, or before one of the masters of the said superior courts in the manner hereinafter provided, according to the nature of the case, as such court or judge may direct; and the making such proof shall be a condition precedent to his obtaining judgment.

As to actions against foreigners residing out of the jurisdiction of superior courts.

19. In any action against a person residing out of the jurisdiction of the said courts, and not being a British subject, the like proceedings may be taken as against a British subject resident out of the jurisdiction, save that in lieu of the form of writ of summons in the schedule (A.) to this act annexed, marked No. 2, the plaintiff shall issue a writ of summons according to the form contained in the said schedule (A.), marked No. 3, and shall in manner aforesaid serve a notice of such last-mentioned writ upon the defendant therein mentioned, which notice shall be in the form contained in the said schedule also marked No. 3; and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad, and by leave of the court or a judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

Omission to insert or indorse matters in or on

20. If the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof any of the matters required by this act to be inserted therein or indorsed thereon,

writ not to nullify it.

such writ or copy thereof shall not on that account be held void, but it may be set aside as irregular, or amended, upon application to be made to the court out of which the same shall issue, or to a judge; and such amendment may be made, upon any application to set aside the writ, upon such terms as to the court or judge may seem fit.

Substitution by mistake or inadvertence of one form of writ for another may be amended by judge without costs.

21. If either of the forms of writ of summons contained in the schedule (A.) to this act annexed, and marked respectively Nos. 1, 2 and 3, shall by mistake or inadvertence be substituted for any other of them, such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action, but the writ may, upon an *ex parte* application to a judge, whether before or after any application to set aside such writ or any proceeding thereon, and whether the same or notice thereof shall have been served or not, be amended by such judge without costs.

Writs for service within and without jurisdiction may be concurrent, and *vice versâ*.

22. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction, and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

Affidavits in certain cases may be sworn before a consul.

23. Any affidavit for the purpose of enabling the court or a judge to direct proceedings to be taken against a defendant residing out of the jurisdiction of the said courts may be sworn before any consul general, consul, vice-consul, or consular agent for the time being, appointed by her majesty at any foreign port or place; and every affidavit so sworn by virtue of this act may be used and shall be admitted in evidence, saving all just exceptions, provided it purport to be signed by such consul general, consul, vice-consul, or consular agent, upon proof of the official character and signature of the person appearing to have signed the same: provided always, that if any person shall forge the signature of any such affidavit, or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not exceeding three years, nor less than one year, with hard labour; and every person who shall be charged with committing any felony under this act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the county or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in any county or place in which the principal offender may be tried: provided also, that if any person shall wilfully and corruptly make a false affidavit before such consul general, consul, vice-consul, or consular agent, every person so offending shall be deemed and taken to be guilty of perjury, in like manner as if such false affidavit had been made in England

before competent authority, and shall and may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place.

Distringas to compel appearance or to proceed to outlawry abolished.

24. From the time when this act shall commence and take effect, so much of the said act of his late majesty King William the Fourth as relates to the writ of *distringas*, and the proceeding thereon, whether for the purpose of compelling appearance or for proceedings to outlawry, shall be repealed, except so far as may be necessary for the purpose of giving effect to proceedings already taken, or to be taken after the commencement of this act, under or by reason of any writ of *distringas* issued before the commencement of this act, or under any rule or order authorizing the issuing of such writ, and made before the commencement of this act.

Special indorsement of the particulars of debts or liquidated demands may be made on the writ.

25. In all cases where the defendant resides within the jurisdiction of the court, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt, or on a guarantee, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, the plaintiff shall be at liberty to make upon the writ of summons and copy thereof a special indorsement of the particulars of his claim, in the form contained in the schedule (A.) to this act annexed, marked No. 4, or to the like effect; and when a writ of summons has been indorsed in the special form hereinbefore mentioned, the indorsement shall be considered as particulars of demand, and no further or other particulars of demand need be delivered, unless ordered by the court or a judge.

Special indorsement to stand for particulars of demand.

Appearance, and Proceedings in Default of Appearance.

And with respect to the appearance of the defendant, and proceedings of the plaintiff in default of appearance, be it enacted as follows:

Appearance according to provisions of acts of 12 Geo. 1, c. 29, and 2 Will. 4, c. 39, abolished.

26. From the time when this act shall commence and take effect, so much of a certain act of parliament passed in the twelfth year of the reign of his late majesty King George the First, intituled "An Act to prevent frivolous and vexatious Arrests," and so much of the said act of his late majesty King William the Fourth as relates to the entering an appearance for the defendant by the plaintiff in any action in any of the said superior courts, shall be repealed, except so far as may be necessary to support proceedings heretofore taken, and no appearance need be entered by the plaintiff for the defendant.

Final judgment upon writ specially indorsed in default of appearance.

27. In case of nonappearance by the defendant, where the writ of summons is indorsed in the special form herein-before provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a judge's order for leave to proceed under the provisions of this act, and a copy of the writ of summons, at once to sign final judgment in the form contained in the Schedule (A.) to this act annexed, marked No. 5, (on which judgment no proceeding in error shall lie,) for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, (to be fixed by the masters of the said superior courts, or any three of them, subject to the approval of the judges thereof, or any eight of them, of whom the lord chief justices and the lord chief baron shall be three,) unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way; and the plaintiff may upon such judgment issue execution at the expiration of eight days from the last day for appearance, and not before: provided always, that it shall be lawful for the court or a judge, either before or after final judgment, to let in the defendant to defend upon an application, supported by satisfactory affidavits accounting for the nonappearance, and disclosing a defence upon the merits.

Judgment for nonappearance where the writ is not indorsed in the special form.

28. In case of such nonappearance, where the writ of summons is not indorsed in the special form herein-before provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a judge's order for leave to proceed under the provisions of this act, and a copy of the writ of summons, to file a declaration indorsed with a notice to plead in eight days, and to sign judgment by default at the expiration of the time to plead, so indorsed as aforesaid; and in the event of no plea being delivered, where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the writ of summons herein-before provided, and the amount claimed is indorsed on the writ of summons, the judgment shall be final, and execution may issue for an amount not exceeding the amount indorsed on the writ of summons, with interest at the rate specified, if any, and the sum fixed by the masters for costs, as herein-before mentioned, unless the plaintiff claim more, in which case the costs shall be taxed in the ordinary way: provided always, that in such case the plaintiff shall not be entitled to more costs than if he had made such special indorsement, and signed judgment upon nonappearance.

Appearance to be entered at any time before judgment.

29. The defendant may appear at any time before judgment, and if he appear after the time specified either in the writ of summons, or in any rule or order to proceed as if personal service had been effected, he shall, after notice of such appearance to the plaintiff or his attorney, as the case may be, be in the same position as to pleadings and other proceedings in the action as if he had appeared in time: pro-

vided always, that a defendant appearing after the time appointed by the writ shall not be entitled to any further time for pleading or any other proceeding than if he had appeared within such appointed time.

Appearance by the defendant in person to give an address at which proceedings may be served.

30. Every appearance by the defendant in person shall give an address, at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service; and if such address be not given the appearance shall not be received; and if an address so given shall be illusory or fictitious, the appearance shall be irregular, and may be set aside by the court or a judge, and the plaintiff may be permitted to proceed by sticking up the proceedings in the master's office without further service.

Mode of appearance to writ of summons.

31. The mode of appearance to every such writ of summons, or under the authority of this act, shall be by delivering a memorandum in writing according to the following form, or to the like effect:

A., plaintiff, against C. D. / *or* / against C. D. and another, / *or* / against C. D. and others. } The defendant C. D. appears in person. / E. F., attorney for C. D., appears for him.

[*If the defendant appears in person here give his address.*]

Entered the day of 18 .

Such memorandum to be delivered to the proper officer or person in that behalf, and to be dated on the day of the delivery thereof.

Proceedings mentioned in writ or notice may be had and taken.

32. All such proceedings as are mentioned in any writ or notice issued under this act shall and may be had and taken in default of a defendant's appearance.

Proceedings where only some of the defendants appear to a writ specially indorsed.

33. In any action brought against two or more defendants, where the writ of summons is indorsed in the special form herein-before provided, if one or more of such defendants only shall appear, and another or others of them shall not appear, it shall and may be lawful for the plaintiff to sign judgment against such defendant or defendants only as shall not have appeared, and, before declaration against the other defendant or defendants, to issue execution thereupon, in which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared; or the plaintiff may, before issuing such execution, declare against such defendant or defendants as shall have appeared, stating, by way of suggestion, the judgment obtained against the other defendant or defendants who shall not have appeared, in which case the judgment so obtained against the defendant or defendants who shall not have appeared shall operate and take effect in like manner as a judgment by default obtained before the commencement of this act against one or more of the several defendants in an action of debt before the commencement of this act.

Joinder of Parties.

And with respect to the joinder of parties to actions, be it enacted as follows:

Nonjoinder and misjoinder of plaintiffs may be amended before trial.

34. It shall and may be lawful for the court or a judge, at any time before the trial of any cause, to order that any person or persons, not joined as plaintiff or plaintiffs in such cause, shall be so joined; or that any person or persons, originally joined as plaintiff or plaintiffs, shall be struck out from such cause, if it shall appear to such court or judge that injustice will not be done by such amendment, and that the person or persons, to be added as aforesaid, consent, either in person or by writing, under his, her, or their hands, to be so joined, or that the person or persons, to be struck out as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent in manner aforesaid to be so struck out; and such amendment shall be made upon such terms as to the amendment of the pleadings (if any), postponement of the trial, and otherwise, as the court or judge by whom such amendment is made shall think proper; and when any such amendment shall have been made, the liability of any person or persons, who shall have been added as co-plaintiff or co-plaintiffs, shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such cause.

Nonjoinder and misjoinder of plaintiffs may be amended at the trial, as in cases of amendments of variances under 3 & 4 Will. 4, c. 42.

35. In case it shall appear at the trial of any action that there has been a misjoinder of plaintiffs, or that some person or persons, not joined as plaintiff or plaintiffs, ought to have been so joined, and the defendant shall not, at or before the time of pleading, have given notice in writing that he objects to such nonjoinder, specifying therein the name or names of such person or persons, such misjoinder or nonjoinder may be amended, as a variance, at the trial by any court of record holding plea in civil actions, and by any judge sitting at nisi prius, or other presiding officer, in like manner as to the mode of amendment, and proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as in the case of amendments of variances under an act of parliament passed in the session of parliament, held in the third and fourth years of the reign of his late majesty King William the Fourth, intituled "An Act for the further Amendment of the Law, and the better Advancement of Justice," if it shall appear to such court, or judge, or other presiding officer, that such misjoinder or nonjoinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons, to be added as aforesaid, consent, either in person or by writing, under his, her, or their hands, to be so joined, or that the person or persons, to be struck out as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent, in manner aforesaid, to be so struck out; and such amendment shall be made upon such terms as the court, or judge, or other presiding officer, by whom such amendment is made, shall think proper; and when any such amendment shall

have been made, the liability of any person or persons, who shall have been added as co-plaintiff or co-plaintiffs, shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such action.

Upon notice or plea of nonjoinder of plaintiffs, proceedings may be amended.

36. In case such notice be given, or any plea in abatement for nonjoinder of a person or persons as co-plaintiff or co-plaintiffs, in cases where such plea in abatement may be pleaded, be pleaded by the defendant, the plaintiff shall be at liberty, without any order, to amend the writ and other proceedings before plea, by adding the name or names of the person or persons named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the costs of, and occasioned by such amendment only, and in such case the defendant shall be at liberty to plead de novo.

Misjoinder of defendants may be amended before or at trial.

37. It shall and may be lawful for the court or a judge in the case of the joinder of too many defendants in any action on contract, at any time before the trial of such cause, to order that the name or names of one or more of such defendants be struck out, if it shall appear to such court or judge that injustice will not be done by such amendment; and the amendment shall be made upon such terms as the court or judge, by whom such amendment is made, shall think proper; and in case it shall appear at the trial of any action on contract that there has been a misjoinder of defendants, such misjoinder may be amended, as a variance, at the trial, in like manner as the misjoinder of plaintiffs has been hereinbefore directed to be amended, and upon such terms as the court, or judge, or other presiding officer, by whom such amendment is made, shall think proper.

Upon plea in abatement for nonjoinder of defendants, proceedings may be amended.

38. In any action on contract where the nonjoinder of any person or persons as a co-defendant or co-defendants has been pleaded in abatement, the plaintiff shall be at liberty, without any order, to amend the writ of summons and the declaration, by adding the name or names of the person or persons named in such plea in abatement as joint contractors, and to serve the amended writ upon the person or persons so named in such plea in abatement, and to proceed against the original defendant or defendants, and the person or persons so named in such plea in abatement: provided that the date of such amendment shall, as between the person or persons so named in such plea in abatement and the plaintiff, be considered for all purposes as the commencement of the action.

Provision in the case of subsequent proceedings against the persons named in a plea in abatement for nonjoinder of defendants.

39. In all cases after such plea in abatement and amendment, if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original defendant or defendants, the original defendant or defendants shall be entitled as against the plaintiff to the costs of such plea in abatement and amendment; but if at such trial it shall appear that the original defendant or any of the original defendants is or are liable, but that one or more of the persons named in such

plea in abatement is or are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same, together with the costs of the plea in abatement and amendment, as costs in the cause against the original defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person: provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

Joinder of claims by husband and wife, with claims in right of husband.

40. In any action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the court or a judge shall think fit: provided that in the case of the death of either plaintiff such suit, so far only as relates to the causes of action, if any, which do not survive, shall abate.

Joinder of Causes of Action.

And with respect to joinder of causes of action, be it enacted as follows:

Different causes of action may be joined, but separate trials may be ordered.

41. Causes of action, of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit; but this shall not extend to replevin or ejectment; and where two or more of the causes of action so joined are local, and arise in different counties, the venue may be laid in either of such counties; but the court or a judge shall have power to prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case such court or judge may order separate records to be made up, and separate trials to be had.

Questions by Consent without Pleading.

And for the determination of questions raised by consent of the parties without pleading, be it enacted as follows:

Questions of fact may, after writ issued, by consent and leave of a judge, be raised without pleadings.

42. Where the parties to an action are agreed as to the question or questions of fact to be decided between them, they may, after writ issued, and before judgment, by consent, and order of a judge, (which order any judge shall have power to make, upon being satisfied that the parties have a bonâ fide interest in the decision of such question or questions, and that the same is or are fit to be tried,) proceed to the trial of any question or questions of fact without formal pleadings; and such question or questions may be stated for trial in an issue in the form contained in the schedule (A.) to this act annexed, marked No. 6, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action; and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the court, as in other actions.

43. The parties may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, and which shall be embodied in the said or any subsequent order, that upon the finding of the jury in the affirmative or negative of such issue or issues, a sum of money fixed by the parties, or to be ascertained by the jury upon a question inserted in the issue for that purpose, shall be paid by one of such parties to the other of them, either with or without the costs of the action. Agreement may be entered into for the payment of money and costs according to the result of the issue.

44. Upon the finding of the jury in any such issue, judgment may be entered for such sum as shall be so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the court or a judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the verdict, or for a new trial. Judgment to be entered according to the agreement, and execution issued forthwith, unless stayed.

45. The proceedings upon such issue may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. Proceedings upon issue may be recorded.

46. The parties may, after writ issued, and before judgment, by consent, and order of a judge, state any question or questions of law in a special case for the opinion of the court, without any pleadings. Questions of law may be raised after writ issued, by consent, &c., without pleading.

47. The parties may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, and which shall be embodied in the said or any subsequent order, that upon the judgment of the court being given in the affirmative or negative of the question or questions of law raised by such special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of such parties to the other of them, either with or without costs of the action; and the judgment of the court may be entered for such sum as shall be so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed by proceedings in error. Agreement as to payment of money and costs, according to judgment upon special case.

48. In case no agreement shall be entered into as to the costs of such action, the costs shall follow the event, and be recovered by the successful party. Costs to follow the event, unless otherwise agreed.

Pleadings in general.

And with respect to the language and form of pleadings in general, be it enacted as follows:

Fictitious and needless averments not to be made.

49. All statements which need not be proved, such as the statement of time, quantity, quality, and value, where these are immaterial; the statement of losing and finding, and bailment, in actions for goods or their value; the statement of acts of trespass having been committed with force and arms, and against the peace of our lady the Queen; the statement of promises which need not be proved, as promises in

indebitatus counts, and mutual promises to perform agreements; and all statements of a like kind, shall be omitted.

Judgment upon demurrer to be given according to the very right of the cause.

50. Either party may object by demurrer to the pleading of the opposite party, on the ground that such pleading does not set forth sufficient ground of action, defence, or reply, as the case may be; and where issue is joined on such demurrer, the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in or lack of form; and no judgment shall be arrested, stayed, or reversed for any such imperfection, omission, defect in or lack of form.

Objections by way of special demurrer taken away.

51. No pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer.

Pleadings framed to embarrass may be struck out or amended.

52. If any pleading be so framed as to prejudice, embarrass, or delay the fair trial of the action, the opposite party may apply to the court or a judge to strike out or amend such pleading, and the court or any judge shall make such order respecting the same, and also respecting the costs of the application, as such court or judge shall see fit.

Four days notice substituted for rule to declare, reply, or rejoin.

53. Rules to declare, or declare peremptorily, and rules to reply, and plead subsequent pleadings, shall not be necessary, and instead thereof a notice shall be substituted requiring the opposite party to declare, reply, rejoin, or as the case may be, within four days, otherwise judgment, such notice to be delivered separately or indorsed on any pleading to which the opposite party is required to reply, rejoin, or as the case may be.

Pleadings to be dated and entered as of time of pleading, unless order to the contrary.

54. Every declaration and other pleading shall be entitled of the proper court, and of the day of the month and the year when the same was pleaded, and shall bear no other time or date, and every declaration and other pleading shall also be entered on the record made up for trial and on the judgment roll under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the court or a judge.

Profert and oyer abolished.

55. It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and if profert shall be made it shall not entitle the opposite party to crave oyer of or set out upon oyer such deed or other document.

Document may be set forth, and considered a part of the pleading in which it is set forth.

56. A party pleading in answer to any pleading in which any document is mentioned or referred to shall be at liberty to set out the whole or such part thereof as may be material, and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.

Performance of conditions precedent may be

57. It shall be lawful for the plaintiff or defendant in any action to aver performance of conditions precedent generally, and the opposite party shall not deny such averment generally, but shall specify in his pleading the condition or con-

ditions precedent the performance of which he intends to contest. averred generally.

Declaration.

And with regard to the time and manner of declaring, and to particulars of demand, be it enacted as follows: Plaintiff to declare within a year.

58. A plaintiff shall be deemed out of court, unless he declare within one year after the writ of summons is returnable.

59. Every declaration shall commence as follows, or to the like effect: Forms of commencement and conclusion of declaration.

[Venue.] A. B. by E. F., his attorney [*or* "in person," *as the case may be*], sues C. D. for [*here state the cause of action*];

and shall conclude as follows, or to the like effect:

And the plaintiff claims £ , [*or if the action is brought to recover specific goods*, "the plaintiff claims a return of the said goods or their value, and £ for their detention."]

60. In all cases in which, after a plea in abatement of the nonjoinder of another person as defendant, the plaintiff shall, without having proceeded to trial on an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, or shall amend by adding the omitted defendant or defendants, the commencement of the declaration shall be in the following form, or to the like effect: Commencement of declaration after plea of nonjoinder.

[Venue.] A. B. by E. F., his attorney [*or* "in his own proper person," *&c.*], sues C. D. and G. H., which said C. D. has heretofore pleaded in abatement the nonjoinder of the said G. H. for, &c.

61. In actions of libel and slander the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient. Declaration for libel or slander.

Pleas and subsequent Pleadings.

And as to pleas and subsequent pleadings, be it enacted as follows:

62. No rule to plead or demand of plea shall be necessary, and the notice to plead indorsed on the declaration or delivered separately shall be sufficient. Rules to plead and demand of plea abolished.

63. In cases where the defendant is within the jurisdiction, the time for pleading in bar, unless extended by the court or a judge, shall be eight days; and a notice requiring the defendant to plead thereto in eight days, otherwise judgment, Time for pleading, where defendant is within juris-

diction, to be eight days.

may, whether the declaration be delivered or filed, be indorsed upon the declaration, or delivered separately.

Express colour abolished.

64. Express colour shall no longer be necessary in any pleading.

Special traverses abolished.

65. Special traverses shall not be necessary in any pleading.

Formal commencement and prayer of judgment unnecessary.

66. In a plea or subsequent pleading it shall not be necessary to use any allegation of *actionem non*, or *actionem ulterius non*, or to the like effect, or any prayer of judgment, nor shall it be necessary in any replication or subsequent pleading, to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment.

Commencement of plea.

67. No formal defence shall be required in a plea, or avowry, or cognizance, and it shall commence as follows, or to the like effect:

The defendant by his attorney [*or* "in person," *or as the case may be*,] says that [*here state the first defence*];

and it shall not be necessary to state in a second or other plea, or avowry, or cognizance, that it is pleaded by leave of the court or a judge, or according to the form of the statute, or to that effect; but every such plea, avowry, or cognizance shall be written in a separate paragraph, and numbered, and shall commence as follows, or to the like effect:

And for a second [*&c.*] plea the defendant says, that [*here state second, &c. defence*];

or if pleaded to part only, then as follows, or to the like effect:

And for a second [*&c.*] plea to [*stating to what it is pleaded*], the defendant says that, *&c.*

and no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading.

Plea of matter subsequent to action.

68. Any defence arising after the commencement of any action shall be pleaded according to the fact, without any formal commencement or conclusion; and any plea which does not state whether the defence therein set up arose before or after action shall be deemed to be a plea of matter arising before action.

Plea *puis darrein continuance*, when and how to be pleaded.

69. In cases in which a plea *puis darrein continuance* has heretofore been pleadable in banc or at nisi prius, the same defence may be pleaded, with an allegation that the matter arose after the last pleading; and such plea may, when necessary, be pleaded at nisi prius, between the tenth of August and twenty-fourth of October; but no such plea shall be allowed unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea, or unless the court or a judge shall otherwise order.

Payment into court in certain actions.

70. It shall be lawful for the defendant in all actions, (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant,) and, by leave of the court or a judge, upon such terms as they or he may think fit, for one or more of several defendants to pay into court a sum of money by way of compensation or

amends: provided that nothing herein contained shall be taken to affect the provisions of a certain act of parliament passed in the session of parliament holden in the sixth and seventh years of the reign of her present majesty, intituled "An Act to amend the Law respecting defamatory Words and Libel."

Payment into court how pleaded.

71. When money is paid into court, such payment shall be pleaded in all cases, as near as may be, in the following form, *mutatis mutandis:*

> The defendant by his attorney [*or* "in person," *&c.*] [*if pleaded to part say,* "as to £ parcel of the money claimed"], brings into court the sum of £ and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to.

No order to pay money into court.

72. No rule or judge's order to pay money into court shall be necessary, except in the case of one or more of several defendants, but the money shall be paid to the proper officer of each court, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the plaintiff or to his attorney, upon a written authority from the plaintiff, on demand.

Proceeding by plaintiff after payment into court.

73. The plaintiff, after the delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and, in case of nonpayment thereof within forty-eight hours, to sign judgment for his costs of suit so taxed, or the plaintiff may reply that the sum paid into court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and, in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

Pleas to actions partaking both of breach of contract and wrong.

74. Whereas certain causes of action may be considered to partake of the character both of breaches of contract and of wrongs, and doubts may arise as to the form of pleas in such actions, and it is expedient to preclude such doubts: Any plea, which shall be good in substance, shall not be objectionable on the ground of its treating the declaration either as framed for a breach of contract, or for a wrong.

Payment, set-off and other pleadings which can be construed distributively shall be so construed.

75. Pleas of payment and set-off, and all other pleadings capable of being construed distributively, shall be taken distributively, and if issue is taken thereon, and so much thereof as shall be sufficient answer to part of the causes of action proved shall be found true by the jury, a verdict shall pass for the defendant in respect of so much of the causes of action as shall be answered, and for the plaintiff in respect of so much of the causes of action as shall not be so answered.

Traverse of the declaration.

76. A defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any mate-

rial allegation in the declaration, although it might have been included in a general traverse.

Traverse of plea or subsequent pleading of defendant.

77. A plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or, admitting some part or parts thereof, to deny all the rest, or to deny any one or more allegations.

Traverse of replication or subsequent pleading of the plaintiff.

78. A defendant shall be at liberty in like manner to deny the whole or part of a replication or subsequent pleading of the plaintiff.

Joinder of issue.

79. Either party may plead, in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect:

The plaintiff joins issue upon the defendant's first [*&c., specifying what or what part*] plea:

The defendant joins issue upon the plaintiff's replication to the first [*&c., specifying what*] plea:

and such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the plaintiff's pleading is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant.

As to pleading and demurring together.

80. Either party may, by leave of the court or a judge, plead and demur to the same pleading at the same time, upon an affidavit by such party, or his attorney, if required by the court or judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the court or a judge to direct which issue shall be first disposed of.

Several matters may be pleaded at any stage of the pleadings.

81. The plaintiff in any action may, by leave of the court or a judge, plead in answer to the plea, or the subsequent pleading of the defendant, as many several matters as he shall think necessary to sustain his action; and the defendant in any action may, by leave of the court or a judge, plead in answer to the declaration, or other subsequent pleading of the plaintiff, as many several matters as he shall think necessary for his defence, upon an affidavit of the party making such application, or his attorney, if required by the court or judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact; provided that the costs of any issue, either of fact or law, shall follow the finding or judgment upon such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues.

Judge's order to plead several matters sufficient.

82. No rule of court for leave to plead several matters shall be necessary where a judge's order has been made for the same purpose.

Objections to pleadings to be heard on summons to plead several matters.

83. All objections to the pleading of several pleas, replications or subsequent pleadings, or several avowries or cognizances, on the ground that they are founded on the same ground of answer or defence, shall be heard upon the summons to plead several matters.

Certain pleas may be pleaded together without leave.

84. The following pleas, or any two or more of them, may be pleaded together as of course, without leave of the court or a judge; that is to say, a plea denying any contract or debt alleged in the declaration; a plea of tender as to part; a plea of the statute of limitations, set-off, bankruptcy of the defendant, discharge under an insolvent act, plene administravit, plene administravit præter, infancy, coverture, payment, accord and satisfaction, release, not guilty, a denial that the property an injury to which is complained of is the plaintiff's, leave and licence, son assault demense, and any other pleas which the judges of the said superior courts, or any eight or more of them, of whom the chief judges of the said courts shall be three, shall by any rule or order, to be from time to time by them made in term or vacation, order or direct.

Signature of counsel.

85. The signature of counsel shall not be required to any pleading.

For pleading several matters without leave, judgment may be signed.

86. Except in the cases herein specifically provided for, if either party plead several pleas, replications, avowries, cognizances, or other pleadings, without leave of the court or a judge, the opposite party shall be at liberty to sign judgment; provided that such judgment may be set aside by the court or a judge, upon an affidavit of merits, and such terms as to costs and otherwise as they or he may think fit.

One new assignment only allowed in respect of the same cause of action.

87. One new assignment only shall be pleaded to any number of pleas to the same cause of action; and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify, or for an excess over and above what all the defences set up in such pleas justify, or both.

Pleas not to be repeated.

88. No plea, which has already been pleaded to the declaration, shall be pleaded to such new assignment, except a plea in denial, unless by leave of the court or a judge; and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.

Form of demurrer and joinder in demurrer.

89. The form of a demurrer, except in the cases herein specifically provided for, shall be as follows, or to the like effect:

"The defendant, by his attorney [*or* 'in person,' &c., *or* "'plaintiff'] says, that the declaration [*or* 'plea,' "&c.] is bad in substance;"

and in the margin thereof some substantial matter of law in-

tended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside by the court or a judge, and leave may be given to sign judgment as for want of a plea; and the form of a joinder in demurrer shall be as follows, or to the like effect:

"The plaintiff [*or* 'defendant'] says that the declaration [*or* 'plea,' &c.] is good in substance."

Time for pleading after amendment.

90. Where an amendment of any pleading is allowed, no new notice to plead thereto shall be necessary; but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever shall last expire, unless otherwise ordered by the court or a judge; and in case the amended pleading has been pleaded to before amendment, and is not pleaded to *de novo* within two days after amendment, or within such other time as the court or a judge shall allow, the pleadings originally pleaded thereto shall stand and be considered as pleaded in answer to such amended pleading.

Examples of Pleading.

And whereas it is desirable that examples should be given of the statements of causes of action, and of forms of pleading: be it enacted as follows:

Forms in schedule may be adopted.

91. The forms contained in the Schedule (B.) to this act annexed shall be sufficient, and those and the like forms may be used, with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity.

Judgment by Default, and ascertaining Amount to be recovered.

And with respect to judgment by default, and the mode of ascertaining the amount to be recovered thereupon, be it enacted as follows:

Rule to compute abolished.

92. No rule to compute shall be necessary or used; but nothing in this act contained shall invalidate any proceedings already taken or to be taken by reason of any rule to compute made, or applied for, before the commencement of this act.

Judgment by default for liquidated demands final.

93. In actions where the plaintiff seeks to recover a debt or liquidated demand in money, judgment by default shall be final.

Inquiry of damages may be directed to take place before the master.

94. In actions in which it shall appear to the court or a judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the court or a judge may direct that the amount, for which final judgment is to be signed, shall be ascertained by one of the masters of the said court; and the attendance of witnesses and the production of documents before such master may be compelled by subpœna, in the same manner as before a jury upon a writ of inquiry; and it shall be lawful for such master to ad-

journ the inquiry from time to time, as occasion may require; and the master shall indorse upon the rule or order for referring the amount of damages to him, the amount found by him, and shall deliver the rule or order, with such indorsement to the plaintiff; and such and the like proceedings may thereupon be had as to taxation of costs, signing judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry.

Judgment for money demands without distinction between debt and damages.

95. In all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of a debt or damages.

Saving as to certain provisions of 8 & 9 Will. 3, c. 11.

96. Nothing in this act contained shall in any way affect the provisions of a certain act of parliament passed in the session of parliament holden in the eighth and ninth years of the reign of his majesty King William the Third, intituled "An Act for the better preventing frivolous and vexatious Suits," as to the assignment or suggestion of breaches, or as to judgment for a penalty as a security for damages in respect of further breaches.

Notice of Trial, Inquiry and Countermand.

And with respect to notice of trial and inquiry, and countermand thereof, be it enacted as follows:

Time for notice of trial and inquiry.

97. Ten days notice of trial or inquiry shall be given, and shall be sufficient in all cases, whether at bar or nisi prius, in town or country, unless otherwise ordered by the court or a judge.

Notice of countermand.

98. A countermand of notice of trial shall be given four days before the time mentioned in the notice of trial, unless short notice of trial has been given, and then two days before the time mentioned in the notice of trial, unless otherwise ordered by the court or a judge, or by consent.

Costs of the day.

99. A rule for costs of the day for not proceeding to trial pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit, without motion.

Judgment for not proceeding to Trial.

And with respect to judgment for default in not proceeding to trial, be it enacted as follows:

Statute 14 Geo. 2, c. 17, as to judgment in case of nonsuit repealed.

100. The act passed in the fourteenth year of the reign of his Majesty King George the Second, intituled "An Act to prevent Inconveniences arising from Delays of Causes after Issue joined," so far as the same relates to judgment as in the case of a nonsuit, shall be and the same is hereby repealed, except as to proceedings taken or commenced thereupon before the commencement of this act.

Proceeding where plaintiff neglects to bring on the cause to be tried.

101. Where any issue is or shall be joined in any cause, and the plaintiff has neglected or shall neglect to bring such issue on to be tried, that is to say, in town causes where issue has been or shall be joined in, or in the vacation before, any term, for instance, Hilary Term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried during or before the following term and vacation, for instance, Easter Term and

Vacation, and in country causes where issue has been or shall be joined in, or in the vacation before, Hilary or Trinity Term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the second assizes following such term, or if issue has been or shall be joined in, or in the vacation before, Easter or Michaelmas Term, then, if the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the first assizes after such term, whether the plaintiff shall in the meantime have given notice of trial or not, the defendant may give twenty days' notice to the plaintiff to bring the issue on to be tried at the sittings or assizes, as the case may be, next after the expiration of the notice; and if the plaintiff afterwards neglects to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, the defendant may suggest on the record that the plaintiff has failed to proceed to trial, although duly required so to do, (which suggestion shall not be traversable, but only be subject to be set aside if untrue,) and may sign judgment for his costs; provided that the court or a judge shall have power to extend the time for proceeding to trial, with or without terms.

Nisi Prius Record.

And with respect to the nisi prius record, be it enacted as follows:

Nisi Prius Record not to be sealed or passed.

102. The record of nisi prius shall not be sealed or passed, but may be delivered to the proper officer of the court in which the cause is to be tried, to be by him entered as at present, and remain until disposed of.

Trials in counties palatine.

103. Records of the superior courts of common law shall be brought to trial and entered and disposed of in the counties palatine in the same manner as in other counties.

Jury and Jury Process.

And with respect to juries and jury process, be it enacted as follows:

Jury process abolished.

104. The several writs of *venire facias juratores*, and *distringas juratores*, or *habeas corpora juratorum*, and the entry *jurata ponitur in respectu*, shall no longer be necessary or used.

Precept by judges of assize to summon jurors for civil as well as criminal trials.

105. The precept issued by the judges of assize to the sheriff to summon jurors for the assizes shall direct that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes; and the jurors shall thereupon be summoned in like manner as at present.

A printed panel to be prepared, and annexed to the record.

106. A printed panel of the jurors summoned shall, seven days before the commission day, be made by the sheriff, and kept in the office for inspection; and a printed copy of such panel shall be delivered by the sheriff to any party requiring the same, on payment of one shilling; and such copy shall be annexed to the nisi prius record.

Sheriffs of London and Middlesex to summon

107. The sheriffs of London and Middlesex respectively shall, pursuant to a precept under the hand of a judge of any of the said superior courts, and without any other authority,

summon a sufficient number of common jurors for the trial of all issues in the superior courts of common law, in like manner as before this act; and seven days before the first day of each sittings a printed panel of the jurors so summoned for the trial of causes at such sittings shall be made by such sheriffs, and kept in their offices for public inspection; and a printed copy of such panel shall be delivered by the said sheriffs to any party requiring the same on payment of one shilling; and such copy shall be annexed to the nisi prius record; and the said precept shall and may be in like form as the precept issued by the judges of assize, and one thereof shall suffice for each term, and for all the superior courts; and it shall be the duty of the sheriffs respectively to apply for and procure such precept to be issued in sufficient time before each term to enable them to summon the jurors in manner aforesaid; and it shall be lawful for the several courts, or any judge thereof, at any time to issue such precept or precepts to summon jurors for disposing of the business pending in such courts, and to direct the time and place for which such jurors shall be summoned, and all such other matters as to such judge shall seem requisite.

common jurors, and prepare a panel, to be annexed to the record.

108. The precept issued by the judges of assize as aforesaid shall direct the sheriff to summon a sufficient number of special jurymen, to be mentioned therein, not exceeding forty-eight in all, to try the special jury causes at the assizes; and the persons summoned in pursuance of such precept shall be the jury for trying the special jury causes at the assizes, subject to such right of challenge as the parties are now by law entitled to; and a printed panel of the special jurors so summoned shall be made, kept, delivered, and annexed to the nisi prius record, in like time and manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors; Provided that the court or a judge, in such case as they or he may think fit, may order that a special jury be struck according to the present practice, and such order shall be a sufficient warrant for striking such special jury, and making a panel thereof for the trial of the particular cause

Special jurors, not exceeding forty-eight in number, to be summoned to try all special jury causes at assizes.

109. In any county, except London and Middlesex, the plaintiff in any action, except replevin, shall be entitled to have the cause tried by a special jury, upon giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the defendant, or plaintiff in replevin, shall be so entitled, on giving the like notice within the time now limited for obtaining a rule for a special jury: Provided that the court or a judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit.

Mode of obtaining a special jury in country causes.

110. In London and Middlesex special jurors shall be nominated and reduced by and before the under-sheriff and secondary respectively, in like manner as by the master be-

Special juries in London and Middlesex, how struck.

fore this act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose; and the names of the jurors so struck shall be placed upon a panel, which shall be delivered and annexed to the nisi prius record, in like manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors.

Remedy for delay by notice of trial by special jury.

111. Where the defendant in any case, or plaintiff in replevin, gives notice of his intention to try the cause by a special jury, and the venue is in London or Middlesex, the court or a judge, if satisfied that such notice is given for the purpose of delay, may order that the cause be tried by a common jury, or make such other order as to the trial of the cause as such court or judge shall think fit.

Notice to sheriff of trial by special jury.

112. Where notice has been given to try by special jury, either party may, six days before the first day of the sittings in London or Middlesex, or adjournment day in London, or commission day of the assizes, give notice to the sheriff that such cause is to be tried by a special jury; and in case no such notice be given no special jury need be summoned or attend, and the cause may be tried by a common jury, unless otherwise ordered by the court or a judge.

If special jury not summoned, cause to be tried by a common jury.

113. In all cases where notice is not given to the sheriff that the cause is to be tried by a special jury, and by reason thereof a special jury is not summoned or does not attend, the cause may be tried by a common jury, to be taken from the panel of common jurors, in like manner as if no proceedings had been had to try the cause by a special jury.

View to be by rule without writ.

114. A writ of view shall not be necessary or used, but, whether the view is to be had by a common or special jury, it shall be sufficient to obtain a rule of the court or judge's order, directing a view to be had; and the proceedings upon the rule for a view shall be the same as the proceedings heretofore had under a writ of view; and the sheriff, upon request, shall deliver to either party the names of the viewers, and shall also return their names to the associate for the purpose of their being called as jurymen upon the trial.

Proceedings before jurors so returned same as before this act.

115. The jurors contained in such panels as aforesaid shall be the jurors to try the causes at the assizes and sittings for which they shall be summoned respectively; and all such proceedings may be had and taken before such juries in like manner, and with the like consequences in all respects, as before any jury summoned in pursuance of any writ or writs of *venire facias juratores*, *distringas juratores*, or *habeas corpora juratorum*, before this act.

Defendant's right to try, upon default of the plaintiff, preserved.

116. Nothing herein contained shall affect the right of a defendant to take down a cause for trial, after default by the plaintiff to proceed to trial, according to the course and practice of the court; and if records are entered for trial both by the plaintiff and the defendant, the defendant's record shall be treated as standing next in order after the plaintiff's re-

cord in the list of causes, and the trial of the cause shall take place accordingly.

Admission of Documents.

And with respect to the admission of documents, be it enacted as follows:

Admission of documents

117. Either party may call on the other party by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the master a saving of expense.

Proof of admissions.

118. An affidavit of the attorney in the cause, or his clerk, of the due signature of any admissions made in pursuance of such notice, and annexed to the affidavit, shall be in all cases sufficient evidence of such admissions.

Proof of notice to produce.

119. An affidavit of the attorney in the cause, or his clerk, of the service of any notice to produce, in respect of which notice to admit shall have been given, and of the time when it was served, with a copy of such notice to produce annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served.

Execution.

And with respect to execution, be it enacted as follows:

Execution after trial.

120. A plaintiff or defendant, having obtained a verdict in a cause tried out of term, shall be entitled to issue execution in fourteen days, unless the judge who tries the cause, or some other judge, or the court, shall order execution to issue at an earlier or later period, with or without terms.

Ground writs abolished.

121. It shall not be necessary to issue any writ directed to the sheriff of the county in which the venue is laid, but writs of execution may issue at once into any county, and be directed to and executed by the sheriff of any county, whether a county palatine or not, without reference to the county in which the venue is laid, and without any suggestion of the issuing of a prior writ into such county.

Writs in counties palatine to be directed to the sheriff.

122. All writs of every description issuing out of the superior courts of common law at Westminster, to be executed in the counties palatine, shall be directed and delivered to the sheriffs of such counties, and executed and returned by them to the courts out of which such writs are issued, in the same manner in all respects as writs are executed and returned by the sheriffs of other counties.

Expenses of execution.

123. In every case of execution, the party entiled to execution may levy the poundage fees and expenses of the execution, over and above the sum recovered.

Writs of execution to remain in force for one

124. A writ of execution issued after the commencement of this act, if unexecuted, shall not remain in force for more than one year from the teste of such writ, unless renewed in

year and to be renewed if necessary.

the manner herein-after provided; but such writ may, at any time before its expiration, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal bearing the date of the day, month, and year of such renewal, (such seal to be provided and kept for that purpose at the office of the masters of the court out of which such writ issued,) or by such party giving a written notice of renewal to such sheriff, signed by the party or his attorney, and bearing the like seal of the court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

Production of renewed writ, evidence of renewal.

125. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal, showing the same to have been renewed according to this act, shall be sufficient evidence of its having been so renewed.

Sheriff or gaoler may discharge prisoner by authority of attorney in the cause.

126. A written order under the hand of the attorney in the cause, by whom any writ of *capias ad satisfaciendum* shall have been issued, shall justify the sheriff, gaoler, or person in whose custody the party may be under such writ, in discharging such party, unless the party for whom such attorney professes to act shall have given written notice to the contrary to such sheriff, gaoler, or person in whose custody the opposite party may be; but such discharge shall not be a satisfaction of the debt, unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

Proceedings for charging in execution a person already in prison of the court.

127. It shall not be necessary in any case to sue out a writ of *habeas corpus ad satisfaciendum* to charge in execution a person already in the prison of the court, but such person may be so charged in execution by a judge's order made upon affidavit that judgment has been signed and is not satisfied; and the service of such order upon the keeper of the prison for the time being shall have the effect of a detainer.

Proceedings to revive.

And with respect to proceedings for the revival of judgments and other proceedings by and against persons not parties to the record, be it enacted as follows:

Execution in six years without revival.

128. During the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.

Judgment to be revived by writ or with leave of court, or judge, by suggestion.

129. In cases where it shall become necessary to revive a judgment by reason either of lapse of time, or of a change, by death or otherwise, of the parties entitled or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned, or apply to the court or a judge for leave to enter a suggestion upon the roll, to the effect that it mani-

festly appears to the court that such party is entitled to have execution of the judgment and to issue execution thereupon; such leave to be granted by the court or a judge upon a rule to show cause or a summons, to be served according to the present practice, or in such other manner as such court or judge may direct, and which rule or summons may be in the form contained in the Schedule (A.) to this act annexed, marked No. 7, or to the like effect.

Proceedings upon application for suggestion to revive judgment.

130. Upon such application, in case it manifestly appears that the party making the same is entitled to execution, the court or judge shall allow such suggestion as aforesaid to be entered in the form contained in the Schedule (A.) to this act annexed, marked No. 8, or to the like effect, and execution to issue thereupon, and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the court or judge shall discharge the rule or dismiss the summons with or without costs: provided nevertheless, that in such last-mentioned case the party making such application shall be at liberty to proceed by writ of revivor or action upon the judgment.

Writ of revivor, and proceedings thereon.

131. The writ of revivor shall be directed to the party called upon to show cause why execution should not be awarded, and shall bear teste on the day of its issuing; and, after reciting the reason why such writ has become necessary, it shall call upon the party, to whom it is directed, to appear, within eight days after service thereof, in the court out of which it issues, to show cause why the party at whose instance such writ has been issued should not have execution against the party to whom such writ is directed, and it shall give notice that, in default of appearance, the party issuing such writ may proceed to execution; and such writ may be in the form contained in the Schedule (A.) to this act annexed, marked No. 9, or to the like effect, and may be served in any county, and otherwise proceeded upon, whether in term or vacation, in the same manner as a writ of summons; and the venue in a declaration upon such writ may be laid in any county; and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action.

Writs of *scire facias* in other cases to be tested, directed, and proceeded upon in like manner.

132. All writs of *scire facias* issued out of any of the superior courts of law at Westminster against bail on a recognizance; *ad audiendum errores;* against members of a joint stock company or other body, upon a judgment recorded against a public officer or other person sued as representing such company or body, or against such company or body itself; by or against a husband to have execution of a judgment for or against a wife; for restitution after a reversal in error; upon a suggestion of further breaches after judgment for any penal sum, pursuant to the statute passed in the session holden in the eighth and ninth years of the reign of King William the Third, intituled "An Act for the better preventing frivolous and vexatious Suits;" or for recovery

of land taken under an *elegit*, shall be tested, directed, and proceeded upon, in like manner as writs of revivor.

Appearance to writ of revivor.

133. Notice in writing to the plaintiff, his attorney or agent, shall be sufficient appearance to a writ of revivor.

As to issue of writ of revivor upon judgment more than ten years old.

134. A writ of revivor to revive a judgment less than ten years old shall be allowed without any rule or order; if more than ten years old, not without a rule of court or a judge's order; nor, if more than fifteen, without a rule to show cause.

Death, Marriage and Bankruptcy.

And with respect to the effect of death, marriage and bankruptcy upon the proceedings in an action, be it enacted as follows:

Action not to abate by death.

135. The death of a plaintiff or defendant shall not cause the action to abate, but it may be continued as herein-after mentioned.

Proceedings in case of death of one or more of several plaintiffs or defendants.

136. If there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

Proceeding in case of death of sole plaintiff or sole surviving plaintiff.

137. In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of such plaintiff may, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and, if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of deceased plaintiff, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion, as if such person were originally the plaintiff.

Proceeding upon death of sole or sole surviving defendant.

138. In case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make a suggestion, either in any of the pleadings, if the cause has not arrived at issue, or in a copy of the issue, if it has so arrived, of the death, and that a person named therein is the executor or administrator of the deceased; and may thereupon serve such executor or administrator with a copy of the writ and suggestion, and with a notice, signed by the plaintiff or his attorney, requiring such executor or administrator to appear within eight days after service of the notice, inclusive of the day of such service, and that in default of his so doing the plaintiff may sign judgment against him as such executor or administrator; and the same proceedings may be had and taken in case of nonappearance after such notice, as upon a writ against such executor or administrator in respect of the cause for which the action was brought; and in case no pleadings have taken place before the death, the suggestion shall form part of the declaration, and the declaration and suggestion may be served together, and the new defendant shall

plead thereto at the same time; and in case the plaintiff shall have declared, but the defendant shall not have pleaded before the death, the new defendant shall plead at the same time to the declaration and suggestion; and in case the defendant shall have pleaded before the death, the new defendant shall be at liberty to plead to the suggestion, only by way of denial, or such plea as may be appropriate to and rendered necessary by his character of executor or administrator, unless, by leave of the court or a judge, he should be permitted to plead fresh matter in answer to the declaration; and in case the defendant shall have pleaded before the death, but the pleadings shall not have arrived at issue, the new defendant, besides pleading to the suggestion, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together; and in case the plaintiff shall recover, he shall be entitled to the like judgment in respect of the debt or sum sought to be recovered and in respect of the costs prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, he shall be entitled to the like judgment as in an action originally commenced against the executor or administrator.

Death between verdict and judgment.

139. The death of either party between the verdict and the judgment, shall not hereafter be alleged for error, so as such judgment be entered within two terms after such verdict.

Proceedings in case of death after interlocutory, and before final judgment.

140. If the plaintiff in any action happen to die after an interlocutory judgment and before the final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff; and if the defendant die after such interlocutory judgment and before final judgment therein obtained, the said action shall not abate, if such action might be originally prosecuted or maintained against the executor or administrator of such defendant; and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators, shall and may have a writ of revivor, in the form contained in the schedule (A.) to this act annexed, marked No. 9, or to the like effect, against the defendant, if living after such interlocutory judgment, or if he be dead, then against his executors or administrators, to show cause why damages in such action should not be assessed and recovered by him or them; and if such defendant, his executors or administrators, shall appear at the return of such writ, and not show or allege any matter sufficient to arrest the final judgment, or shall make default, a writ of inquiry of damages shall be thereupon awarded, or the amount, for which final judgment is to be signed, shall be referred to one of the masters, as hereinbefore provided; and upon the return of the writ, or delivery of the order with the amount indorsed thereon to the plaintiff, his executors or administrators, judgment final shall be given for the said plaintiff, his executors or administrators, prosecuting such writ of revivor, against such defendant, his executors or administrators respectively.

Marriage not to abate action.

141. The marriage of a woman plaintiff or defendant shall not cause the action to abate, but the action may, notwithstanding, be proceeded with to judgment; and such judgment may be executed against the wife alone, or, by suggestion or writ of revivor pursuant to this act, judgment may be obtained against the husband and wife, and execution issue thereon; and in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband without any writ of revivor or suggestion; and if in any such action the wife shall sue or defend by attorney appointed by her when sole, such attorney shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the attorney changed according to the practice of the court.

Bankruptcy and insolvency of plaintiff, when not to abate action.

142. The bankruptcy or insolvency of the plaintiff in any action, which the assignees might maintain for the benefit of the creditors, shall not be pleaded in bar to such action, unless the assignees shall decline to continue, and give security for the costs thereof, upon a judge's order to be obtained for that purpose, within such reasonable time as the judge may order, but the proceedings may be stayed until such election is made; and in case the assignees neglect or refuse to continue the action, and give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy.

Arrest of Judgment and Judgment non obstante veredicto.

And with respect to the proceedings upon motions to arrest the judgment, and for judgment *non obstante veredicto*, be it enacted as follows:

Upon motion in arrest of judgment, pursuant to 1 Will. 4, c. 7, or for judgment non obstante veredicto, omitted facts may by leave of the court be suggested.

143. Upon any motion made in arrest of judgment, or to enter an arrest of judgment, pursuant to the statute passed in the first year of his late majesty King William the Fourth, intituled "An Act for the more speedy Judgment and Execution in Actions brought in His Majesty's Courts of Law at Westminster, and in the Court of Common Pleas of the County Palatine of Lancaster, and for amending the Law as to Judgment on a *Cognovit actionem* in Cases of Bankruptcy," or for judgment *non obstante veredicto*, by reason of the non-averment of some alleged material fact or facts or material allegation, or other cause, the party, whose pleading is alleged or adjudged to be therein defective, may, by leave of the court, suggest the existence of the omitted fact or facts, or other matter, which, if true, would remedy the alleged defect; and such suggestion may be pleaded to by the opposite party within eight days after notice thereof, or such further time as the court or a judge may allow; and the proceedings for trial of any issues joined upon such pleadings shall be the same as in an ordinary action.

Judgment to follow result of suggestion.

144. If the fact or facts suggested be admitted, or found to be true, the party suggesting shall be entitled to such judgment as he would have been entitled to, if such fact or facts or allegations had been originally stated in such pleading, and proved or admitted on the trial, together with the costs of, and

occasioned by, the suggestion and proceedings thereon; but if such fact or facts be found untrue, the opposite party shall be entitled to his costs of, and occasioned by, the suggestion and proceedings thereon, in addition to any other costs to which he may be entitled.

Costs of abortive issues.

145. Upon an arrest of judgment, or judgment *non obstante veredicto*, the court shall adjudge to the party, against whom such judgment is given, the costs occasioned by the trial of any issues of fact, arising out of the pleading for defect of which such judgment is given, upon which such party shall have succeeded; and such costs shall be set off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any.

Error.

And with respect to proceedings in error, be it enacted as follows:

Error to be brought within six years.

146. No judgment in any cause shall be reversed or avoided for any error or defect therein, unless error be commenced, or brought and prosecuted with effect, within six years after such judgment signed or entered of record.

Proviso for disabilities.

147. If any person that is or shall be entitled to bring error as aforesaid is or shall be, at the time of such title accrued, within the age of twenty-one years, *feme covert*, *non compos mentis*, or beyond the seas, then such person shall be at liberty to bring error as aforesaid, so as such person commences, or brings and prosecutes the same with effect, within six years after coming to or being of full age, discovert, of sound memory, or return from beyond the seas; and if the opposite party shall, at the time of the judgment signed or entered of record, be beyond the seas, then error may be brought, provided the proceedings be commenced and prosecuted with effect within six years after the return of such party from beyond seas.

Writ of error abolished.

148. A writ of error shall not be necessary or used in any cause, and the proceeding to error shall be a step in the cause, and shall be taken in manner hereinafter mentioned; but nothing in this act contained shall invalidate any proceedings already taken or to be taken by reason of any writ of error issued before the commencement of this act.

Error in law how brought.

149. Either party alleging error in law may deliver to one of the masters of the court a memorandum in writing, in the form contained in the schedule (A.) to this act annexed, marked No. 10, or to the like effect, entitled in the court and cause, and signed by the party or his attorney, alleging that there is error in law in the record and proceedings; whereupon the master shall file such memorandum, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note, together with a statement of the grounds of error intended to be argued, may be served on the opposite party or his attorney.

Error not *supersedeas* till service of the copy of

150. Proceedings in error in law shall be deemed a *supersedeas* of execution from the time of the service of the copy of such note, together with the statement of the grounds of

the note and grounds of error.

error intended to be argued, until default in putting in bail, or an affirmance of the judgment, or discontinuance of the proceedings in error, or until the proceedings in error shall be otherwise disposed of without a reversal of the judgment: provided always, that if the grounds of error shall appear to be frivolous, the court or a judge upon summons may order execution to issue.

Bail in error.

151. Upon any judgment hereafter to be given in any of the said superior courts of common law in any action, execution shall not be stayed or delayed by proceedings in error, or *supersedeas* thereupon, without the special order of the court or a judge, unless the person in whose name such proceedings in error be brought, with two, or, by leave of the court or a judge, more than two sufficient sureties, such as the court (wherein such judgment is or shall be given) or a judge shall allow of, shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the party for whom any such judgment is or shall be given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said judgment, (except in case of a penalty, and in case of a penalty in double the sum really due, and double the costs,) to prosecute the proceedings in error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the proceedings in error be discontinued by the plaintiff therein,) all and singular the sum or sums of money and costs adjudged or to be adjudged upon the former judgment, and all costs and damages to be also awarded for the delaying of execution, and shall give notice thereof to the defendant in error, or his attorney.

Suggestion instead of assignment of and joinder in error.

152. The assignment of and joinder in error in law shall not be necessary or used, and, instead thereof, a suggestion to the effect that error is alleged by the one party and denied by the other, may be entered on the judgment roll in the form contained in schedule (A.) to this act annexed, marked No. 11, or to the like effect: provided that in case the defendant in error intends to rely upon the proceeding in error being barred by lapse of time, or by release of error, or other like matter of fact, he may give four days written notice to the plaintiff in error to assign error as heretofore, instead of entering the suggestion; and he shall, within eight days, plead thereto the bar by lapse of time, or release of error, or other like matter of fact; and thereupon such proceedings may be had as heretofore.

Roll to be made up and suggestion entered by plaintiff in error.

153. The roll shall be made up, and the suggestion last aforesaid entered by the plaintiff in error within ten days after the service of the note of the receipt of the memorandum alleging error, or within such other time as the court or a judge may order; and in default thereof, or of assignment of error in cases where an assignment is required, the defendant in error, his executors or administrators, shall be at liberty to sign judgment of non-pros.

Error brought by one of several persons against whom judgment has been given.

154. In case error be brought upon a judgment given against several persons, and one or some only shall proceed in error, the memorandum alleging error, and the note of the receipt of such memorandum, shall state the names of the persons by whom the proceedings are taken; and in case the other persons, against whom judgment has been given, decline to join in the proceedings in error, the same may be continued, and the suggestion last aforesaid entered, stating the persons by whom the proceedings are brought, without any summons and severance, or if such other persons elect to join, then the suggestion shall state them to be, and they shall be deemed as plaintiffs in error, although not mentioned as such in the previous proceedings.

Judgment roll to be brought into court instead of transcript.

155. Upon such suggestion of error alleged and denied being entered, the cause may be set down for argument in the court of error in the manner heretofore used; and the judgment roll shall, without any writ or return, be brought by the master into the court of error in the Exchequer Chamber, before the justices, or justices and barons, as the case may be, of the other two superior courts of common law, on the day of its sitting, at such time as the judges shall appoint, either in term or in vacation; or if the proceedings in error be before the high court of parliament, then before the high court of parliament, before or at the time of its sitting; and the court of error shall and may thereupon review the proceedings, and give judgment as they shall be advised thereon; and such proceedings and judgment, as altered or affirmed, shall be entered on the original record; and such further proceedings as may be necessary thereon shall be awarded by the court in which the original judgment was given.

Jurisdiction of courts of error over the proceedings.

156. Courts of error shall have power to quash the proceedings in error in all cases in which error does not lie, or where they are taken against good faith, or in any case in which proceedings in error might heretofore have been quashed by such courts; and such courts shall in all respects have such jurisdiction over the proceedings as over the proceedings in error commenced by writ of error.

Court of error to have like powers with court below.

157. Courts of error shall in all cases have power to give such judgment and award such process, as the court from which error is brought ought to have done, without regard to the party alleging error.

Proceedings in error in fact.

158. Either party alleging error in fact may deliver to one of the masters of the court a memorandum in writing, in the form contained in the schedule (A.) to this act annexed, marked No. 12, or to the like effect, intituled in the court and cause, and signed by the party or his attorney, alleging that there is error in fact in the proceedings, together with an affidavit of the matter of fact in which the alleged error consists; whereupon the master shall file such memorandum and affidavit, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note and affidavit may be served or the opposite party or his attorney; and such service shall have the same effect, and the same proceedings may be had

thereafter as heretofore had after the service of the rule for allowance of a writ of error in fact.

Plaintiff may discontinue proceedings in error.

159. The plaintiff in error, whether in fact or law, shall be at liberty to discontinue his proceedings by giving to the defendant in error a notice, headed in the court and cause, and signed by the plaintiff in error or his attorney, stating that he discontinues such proceedings; and thereupon the defendant in error may sign judgment for the costs of, and occasioned by, the proceedings in error, and may proceed upon the judgment on which the error was brought.

Defendant may confess error, and consent to reversal of judgment.

160. The defendant in error, whether in fact or law, shall be at liberty to confess error, and consent to the reversal of the judgment, by giving to the plaintiff in error a notice, headed in the court and cause, and signed by the defendant in error or his attorney, stating that he confesses the error, and consents to the reversal of the judgment; and thereupon the plaintiff in error shall be entitled to and may forthwith sign a judgment of reversal.

Death of plaintiff in error no abatement.

161. The death of a plaintiff in error after service of the note of the receipt of the memorandum alleging error, with a statement of the grounds of error, shall not cause the proceedings to abate, but they may be continued as hereinafter mentioned.

Providing for death of one of several plaintiffs in error.

162. In case of the death of one of several plaintiffs in error, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may be thereupon continued at the suit of, and against the surviving plaintiff in error, as if he were the sole plaintiff.

Proceedings upon death of sole plaintiff or of all the plaintiffs in error.

163. In case of the death of a sole plaintiff or of several plaintiffs in error, the legal representative of such plaintiff or of the surviving plaintiff may, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may thereupon be continued at the suit of, and against such legal representative as the plaintiff in error; and if no such suggestion shall be made, the defendant in error may proceed to an affirmance of the judgment according to the practice of the court, or take such other proceedings thereupon as he may be entitled to.

Death of defendant in error no abatement.

164. The death of a defendant in error shall not cause the proceedings to abate, but they may be continued as hereinafter mentioned.

Proceedings upon death of one of several defendants in error.

165. In case of the death of one of several defendants in error, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the proceedings may be continued against the surviving defendant.

Proceedings upon death of sole defendant or of

166. In case of the death of a sole defendant or of all the defendants in error, the plaintiff in error may proceed upon giving ten days notice of the proceedings in error, and of his intention to continue the same, to the representatives of the

deceased defendants, or if no such notice can be given, then, by leave of the court or a judge, upon giving such notice to the parties interested as he or they may direct. all the defendants in error.

167. The marriage of a woman, plaintiff or defendant in error, shall not abate the proceedings in error, but the same may be continued in like manner as hereinbefore provided with reference to the continuance of an action after marriage. Marriage not to abate proceedings in error.

And with respect to the action of ejectment, be it enacted as follows: *Ejectment.*

168. Instead of the present proceeding by ejectment, a writ shall be issued, directed to the persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the writ with reasonable certainty. Ejectment to be brought by writ.

169. The writ shall state the names of all the persons in whom the title is alleged to be, and command the persons, to whom it is directed, to appear, within sixteen days after service thereof, in the court from which it is issued, to defend the possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession; and the writ shall bear teste of the day on which it is issued, and shall be in force for three months, and shall be in the form contained in the Schedule (A.) to this act annexed, marked No. 13, or to the like effect; and the name and abode of the attorney issuing the same, or, if no attorney, the name and residence of the party shall be indorsed thereon, in like manner as herein-before enacted with reference to the indorsements on a writ of summons in a personal action; and the same proceedings may be had to ascertain whether the writ was issued by the authority of the attorney whose name was indorsed thereon, and who and what the claimants are, and their abode, and as to staying the proceedings upon writs issued without authority, as in the case of writs in personal actions. Form and duration of writ of ejectment.

170. The writ shall be served in the same manner as an ejectment has heretofore been served, or in such manner as the court or a judge shall order, and in case of vacant possession, by posting a copy thereof upon the door of the dwellinghouse or other conspicuous part of the property. Service of writ of ejectment.

171. The persons named as defendants in such writ, or either of them, shall be allowed to appear within the time appointed. Appearance of persons named in the writ.

172. Any other person not named in such writ shall, by leave of the court or a judge, be allowed to appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant. Appearance of persons not named.

173. Any person appearing to defend as landlord in respect of property, whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord; and such person shall be at liberty to set up any defence which a landlord appearing in an action of ejectment has heretofore been allowed to set up, and no other. Appearance and defence by landlord.

Notice to defend for part only.

174. Any person appearing to such writ shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in a notice intituled in the court and cause, and signed by the party appearing or his attorney; such notice to be served within four days after appearance upon the attorney whose name is indorsed on the writ, if any, and if none, then to be filed in the master's office; and an appearance without such notice confining the defence to part, shall be deemed an appearance to defend for the whole.

Want of certainty cured by particulars.

175. Want of "reasonable certainty" in the description of the property, or part of it, in the writ or notice, shall not nullify them, but shall only be ground for an application to a judge for better particulars of the land claimed or defended, which a judge shall have power to give in all cases.

Defence by persons not in possession.

176. The court or a judge shall have power to strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants.

Judgment for default of appearance or defence.

177. In case no appearance shall be entered into within the time appointed, or if an appearance be entered, but the defence be limited to part only, the plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply; which judgment, if for all, may be in the form contained in the Schedule (A.) to this act annexed, marked No. 14, or to the like effect, and if for part, may be in the form contained in the Schedule (A.) to this act annexed, marked No. 15, or to the like effect.

Issue how made up.

178. In case an appearance shall be entered, an issue may at once be made up, without any pleadings, by the claimants or their attorney, setting forth the writ, and stating the fact of the appearance, with its date, and the notice limiting the defence, if any, of each of the persons appearing, so that it may appear for what defence is made, and directing the sheriff to summon a jury; and such issue, in case defence is made for the whole, may be in the form contained in Schedule (A.) to this act annexed, marked No. 16, or to the like effect, and in case defence is made for part, may be in the form contained in the Schedule (A.) to this act annexed, marked No. 15, or to the like effect.

Special case may be stated.

179. By consent of the parties, and by leave of a judge, a special case may be stated according to the practice heretofore used.

Trial of issue.

180. The claimants may, if no special case be agreed to, proceed to trial upon the issue, in the same manner as in other actions; and the particulars of the claim and defence, if any, or copies thereof, shall be annexed to the record by the claimants; and the question at the trial shall, except in the cases hereafter mentioned, be, whether the statement in the writ of the title of the claimants is true or false, and, if true, then which of the claimants is entitled, and whether to the whole or part, and if to part, then to which part of the

property in question; and the entry of the verdict may be made in the form contained in the Schedule (A.) to this act annexed, marked No. 17, or to the like effect, with such modifications as may be necessary to meet the facts.

Verdict when title appears to have expired before trial.

181. In case the title of the claimant shall appear to have existed as alleged in the writ, and at the time of service thereof, but it shall also appear to have expired before the time of trial, the claimant shall, notwithstanding, be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the writ, and to a judgment for his cost of suit.

Trial may be ordered to take place in any county.

182. The court or a judge may, on the application of either party, order that the trial shall take place in any county or place other than that in which the venue is laid; and such order being suggested on the record, the trial may be had accordingly.

Nonappearance at trial.

183. If the defendant appears, and the claimant does not appear at the trial, the claimant shall be non-suited; and if the claimant appears, and the defendant does not appear, the claimant shall be entitled to recover as heretofore, without any proof of his title.

Special verdict, and bill of exceptions.

184. The jury may find a special verdict, or either party may tender a bill of exceptions.

Judgment upon finding for claimant.

185. Upon a finding for the claimant, judgment may be signed, and execution issue for the recovery of possession of the property, or such part thereof as the jury shall find the claimant entitled to, and for costs, within such time, not exceeding the fifth day in term after the verdict, as the court or judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in term after the verdict, or within fourteen days after such verdict, whichever shall first happen.

Judgment upon finding for defendant.

186. Upon a finding for the defendants, or any of them, judgment may be signed, and execution issue for costs against the claimants named in the writ, within such time, not exceeding the fifth day in term after the verdict, as the court or judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in term after the verdict, or within fourteen days after such verdict, whichever shall first happen.

Execution for recovery of possession and costs may be joint or separate.

187. Upon any judgment in ejectment for recovery of possession and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the claimant.

Defence by joint tenants, tenants in common, or coparcener.

188. In case of such an action being brought by some or one of several persons entitled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession, may, at the time of appearance, or within four days after, give notice in the same form as in the notice of a limited defence, that he or she defends as such, and admits the right of the claimant to an undivided share of the property, (stating what share,) but denies any actual ouster of him from the property, and may, within the same

time, file an affidavit stating with reasonable certainty that he or she is such joint tenant, tenant in common, or coparcener, and the share of such property to which he or she is entitled, and that he or she has not ousted the claimant; and such notice shall be entered in the issue in the same manner as the notice limiting the defence, and upon the trial of such an issue the additional question of whether an actual ouster has taken place shall be tried.

Trial and judgment in ejectment against joint tenants, tenants in common, and coparceners.

189. Upon the trial of such issue as last aforesaid, if it shall be found that the defendant is joint tenant, tenant in common, or coparcener with the claimant, then the question whether an actual ouster has taken place shall be tried, and unless such actual ouster shall be proved the defendant shall be entitled to judgment and costs; but if it shall be found either that the defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster has taken place, then the claimant shall be entitled to such judgment for the recovery of possession and costs.

Action not to abate by death.

190. The death of a claimant or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

Proceeding upon death before trial where right survives.

191. In case the right of the deceased claimant shall survive to another claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant; and if such a suggestion shall be made before the trial, then the claimant shall have a verdict and recover such judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.

Proceedings upon death before trial, where right does not survive.

192. In case of the death before trial of one of several claimants, whose right does not survive to another or others of the claimants, where the legal representative of the deceased claimant shall not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant for such share of the property as he is entitled to, and costs.

Upon death of one of several claimants having obtained a verdict.

193. In case of a verdict for two or more claimants, if one of such claimants die before execution executed, the other claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for recovery of possession of the entirety of the property and the costs; but nothing herein contained shall affect the right of the legal representative of the deceased claimant, or the liablity of the surviving claimant to such legal representative; and the entry and possession of such surviving claimant under such execution shall be considered as an entry and possession on behalf of such legal representative in respect of the share of the property to which he shall be entitled as such representative, and the court may direct possesion to be delivered accordingly.

194. In case of the death of a sole claimant, or, before trial, of one of several claimants, whose right does not survive to another or others of the claimants, the legal representative of such claimant may, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased claimant, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion, as hereinbefore provided with reference to a judgment for or against such claimant; and in case such suggestion in the case of a sole claimant be made after trial and before execution executed by delivery of possession thereupon, and such suggestion be denied by the defendant within eight days after notice thereof, or such further time as the court or a judge may allow, then such suggestion shall be tried; and if, upon the trial thereof, a verdict shall pass for the person making such suggestion, he shall be entitled to such judgment as aforesaid for the recovery of possession, and for the costs of and occasioned by such suggestion; and in case of a verdict for the defendant such defendant shall be entitled to such judgment as aforesaid for costs. Proceedings in case of death of claimant, where right does not survive.

195. In case of the death, before or after judgment, of one of several defendants in ejectment, who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution. Proceedings upon death of one of several joint defendants.

196. In case of the death of a sole defendant, or of all the defendants in ejectment, before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the claimants shall be entitled to judgment for recovery of possession of the property, unless some other person shall appear and defend within the time to be appointed for that purpose by the order of the court or a judge, to be made upon the application of the claimants; and it shall be lawful for the court or a judge, upon such suggestion being made and upon such application as aforesaid, to order that the claimants shall be at liberty to sign judgment within such time as the court or judge may think fit, unless the person then in possession, by himself or his tenant, or the legal representative of the deceased defendant, shall within such time appear and defend the action; and such order may be served in the same manner as the writ; and in case such person shall appear and defend the same, proceedings may be taken against such new defendant as if he had originally appeared and defended the action; and if no appearance be entered and defence made, then the claimant shall be at liberty to sign judgment pursuant to the order. Upon death of all the defendants in ejectment before trial.

197. In case of the death of a sole defendant or of all the defendants in ejectment after verdict, the claimants shall Upon death of all defendants in eject-

ment after verdict.

nevertheless be entitled to judgment as if no such death had taken place, and to proceed by execution for recovery of possession without suggestion or revivor, and to proceed for the recovery of the costs, in like manner as upon any other judgment for money, against the legal representatives of the deceased defendant or defendants.

Upon death before trial of defendant in ejectment, who defends separately for part.

198. In case of the death before trial of one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant, or the claimants may proceed against the surviving defendants in respect of the portion of the property for which they defend.

Upon death of defendant defending separately for property in respect of which others also defend.

199. In case of the death before trial of one of several defendants in ejectment, who defends separately in respect of property for which surviving defendants also defend, fit shall be lawful for the court or a judge at any time before the trial to allow the person at the time of the death in possession of the property, or the legal representative of the deceased defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative; and if no such application be made or leave granted, the claimant, suggesting the death in manner aforesaid, may proceed against the surviving defendant or defendants to judgment and execution.

Claimant may discontinue by notice.

200. The claimant in ejectment shall be at liberty at any time to discontinue the action as to one or more of the defendants, by giving to the defendant or his attorney a notice headed in the court and cause, and signed by the claimant or his attorney, stating that he discontinues such action; and thereupon the defendant to whom such notice is given, shall be entitled to and may forthwith sign judgment for costs in the form contained in the Schedule (A.) to this act annexed, marked No. 18, or to the like effect.

Discontinuance of action by one of several claimants.

201. In case one of several claimants shall be desirous to discontinue, he may apply to the court or a judge to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as to the court or judge may seem fit, and the action shall thereupon proceed at the suit of the other claimants.

Judgment for not proceeding to trial after notice.

202. If after appearance entered the claimant, without going to trial, allow the time allowed for going to trial by the practice of the court in ordinary cases after issue joined to elapse, the defendant in ejectment may give twenty days notice to the claimant to proceed to trial at the sittings or assizes next after the expiration of the notice; and if the claimant afterwards neglects to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, and the time for going to trial shall not be extended by the court or a judge, the defendant may sign judgment in the form contained in the Schedule(A.) to this act annexed, marked No. 19, and recover the costs of defence.

Defendant may confess the action.

203. A sole defendant or all the defendants in ejectment shall be at liberty to confess the action as to the whole or part of the property, by giving to such claimant a notice headed in the court and cause, and signed by the defendant or defendants, such signature to be attested by his or their attorney; and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession and costs in the form contained in the Schedule (A.) to this act annexed, marked No. 20, or to the like effect.

Confession by one of several defendants defending separately for part.

204. In case one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, shall be desirous of confessing the claimant's title to such portion, he may give a like notice to the claimant; and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.

Confession by one of several defendants who defend for same property.

205. In case one of several defendants in ejectment, who defends separately in respect of property for which other defendants also defend, shall be desirous of confessing the claimant's title, he may give a like notice thereof; and thereupon the claimant shall be entitled to and may sign judgment against such defendant for the costs occasioned by his defence, and may proceed in the action against the other defendants to judgment and execution.

Formal entry of judgment on the roll unnecessary for purposes of execution.

206. It shall not be necessary before issuing execution upon any judgment under the authority of this act to enter the proceedings upon any roll, but an incipitur thereof may be made upon paper, shortly describing the nature of the judgment according to the practice heretofore used, and judgment may thereupon be signed, and costs taxed, and execution issued, according to the practice heretofore used: provided nevertheless, that the proceedings may be entered upon the roll whenever the same may become necessary for the purpose of evidence, or of bringing error, or the like.

Effect of judgment.

207. The effect of a judgment in an action of ejectment under this act shall be the same as that of a judgment in the action of ejectment heretofore used.

Error and bail in error in ejectment.

208. Error may be brought in like manner as in other actions upon any judgment in ejectment, after a special verdict found by the jury, or a bill of exceptions, or by consent after a special case stated, but, except in the case of such consent as aforesaid, execution shall not be thereby stayed, unless the plaintiff in error shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the claimant, who shall have recovered judgment in such action of ejectment, in double the yearly value of the property, and double the costs recovered by the judgment, with condition, that if the judgment shall

be affirmed by the court of error, or the proceedings in error be discontinued by the plaintiff therein, then the plaintiff in error shall pay such costs, damages, and sum or sums of money as shall be awarded upon or after such judgment affirmed or discontinuance; and it shall be lawful for the court wherein execution ought to be granted upon such affirmation, or discontinuance, upon the application of the claimant, to issue a writ to inquire as well of the mesne profits as of the damage by any waste committed after the first judgment in ejectment, which writ may be tested on the day on which it shall issue, and be returnable immediately after the execution thereof; and upon the return thereof judgment shall be given, and execution awarded for such mesne profits and damages, and also for costs of suit.

Tenants to give notice of ejectment to landlord.

209. Every tenant to whom any writ in ejectment shall be delivered, or to whose knowledge it shall come, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises, demised or holden in the possession of such tenant, to the person of whom he holds, to be recovered by action in any court of common law having jurisdiction for the amount.

Proceedings in ejectment by landlord for nonpayment of rent.

210. In all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the nonpayment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action in ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for nonappearance, if it shall be made appear to the court where the said action is depending, by affidavit, or be proved upon the trial in case the defendant appears, that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six months after such exe-

cution executed, then and in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing error for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment a verdict shall pass for the defendant, or the claimant shall be nonsuited therein, then in every such case such defendant shall have and recover his costs; provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six months after such judgment obtained and execution executed pay all rent in arrear, and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are and ought to be performed.

Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.

211. In case the said lessee, his assignee, or other person claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, proceed for relief in any court of equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he does or shall, within forty days next after a full and perfect answer shall be made by the claimant in such ejectment, bring into court, and lodge with the proper officer such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much and no more as he shall really and bonâ fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord, what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

Tenant paying all rent with costs, proceedings to cease.

212. If the tenant or his assignee do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then and in such case, all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee, his executors, administrators, or assigns, shall, upon

such proceedings as aforesaid, be relieved in equity, he and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease.

Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.

213. Where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing any lands, tenements, or hereditaments for any term or number of years certain, or from year to year, shall have expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling house or usual place of abode of such tenant or person, and the landlord shall thereupon proceed by action of ejectment for the recovery of possession, it shall be lawful for him, at the foot of the writ in ejectment, to address a notice to such tenant or person requiring him to find such bail, if ordered by the court or a judge, and for such purposes as are hereinafter next specified; and upon the appearance of the party on an affidavit of service of the writ and notice, it shall be lawful for the landlord producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, to move the court or apply by summons to a judge at chambers for a rule or summons for such tenant or person to show cause, within a time to be fixed by the court or judge on a consideration of the situation of the premises, why such tenant or person should not enter into a recognizance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimants in the action; and it shall be lawful for the court or judge upon cause shown, or upon affidavit of the service of the rule or summons in case no cause shall be shown, to make the same absolute in the whole or in part, and to order such tenant or person, within a time to be fixed, upon a consideration of all the circumstances, to find such bail, with such conditions and in such manner as shall be specified in the said rule or summons, or such part of the same so made absolute; and in case the party shall neglect or refuse so to do, and shall lay no ground to induce the court or judge to enlarge the time for obeying the same, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with shall be at liberty to sign judgment for recovery of possession and costs of suit in the form contained in the schedule (A.) to this act annexed, marked No. 21, or to the like effect.

Rule or summons for the tenant to give bail.

On rule or summons absolute, if tenant shall not conform, judgment to be for the landlord.

On trial of any ejectment between land-

214. Wherever it shall appear on the trial of any ejectment, at the suit of a landlord against a tenant, that such tenant or his attorney hath been served with due notice of trial, the

judge before whom such cause shall come on to be tried shall, whether the defendant shall appear upon such trial or not, permit the claimant on the trial, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment, to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein; and the jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter, both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits; and in such case the landlord shall have judgment within the time herein-before provided, not only for the recovery of possession and costs, but also for the mesne profits found by the jury: provided always, that nothing herein-before contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict, or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment.

Landlord and tenant, juries to give damages for mesne profits down to the verdict, or to a day specified therein.

215. In all cases in which such security shall have been given as aforesaid, if upon the trial a verdict shall pass for the claimant, unless it shall appear to the judge before whom the same shall have been had that the finding of the jury was contrary to the evidence, or that the damages given were excessive, such judge shall not, except by consent, make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant shall actually find security, by the recognizance of himself and two sufficient sureties, in such reasonable sum as the judge shall direct, conditioned not to commit any waste, or act in the nature of waste, or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict shall have been given to the day on which execution shall finally be made upon the judgment, or the same be set aside, as the case may be: provided always, that the recognizance last above mentioned shall immediately stand discharged and be of no effect, in case proceedings in error shall be brought upon such judgment, and the plaintiff in error shall become bound in the manner hereinbefore provided.

On trials after bail found, judge shall not stay the execution except by consent, or on tenant's finding security.

Bail in error to discharge such security.

216. All recognizances and securities entered into as last aforesaid may and shall be taken respectively in such manner and by and before such persons as are provided and authorized in respect of recognizances of bail upon actions and suits depending in the court in which any such action of ejectment shall have been commenced; and the officer of the same court with whom recognizances of bail are filed shall file such recognizances and securities, for which respectively the sum of two shillings and sixpence, and no more, shall be paid;

Recognizances to be taken as other recognizances of bail; actions on them limited.

but no action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises, or any part thereof, shall actually have been delivered to the landlord.

Landlord to recover possession of lands, &c., after service of writ in ejectment.

217. In all actions of ejectment hereafter to be brought in any of her majesty's courts at Westminster by any landlord against his tenant, or against any person claiming through or under such tenant, for the recovery of any lands or hereditaments in any county, except London or Middlesex, where the tenancy shall expire, or the right of entry into or upon such lands or hereditaments shall accrue to such landlord, in or after Hilary or Trinity terms respectively, it shall be lawful for the claimant in any such action, at any time within ten days after such tenancy shall expire, or right of entry accrue as aforesaid, to serve a writ in ejectment in the form contained in the schedule (A.) to this act annexed, marked No. 13, except that it shall command the persons to whom it is directed to appear within ten days after service thereof in the court in which such action may be brought; and the like proceedings shall be thereupon had as hereinbefore provided, save that it shall be sufficient to give at least six clear days' notice of trial to the defendant before the commission day of the assizes at which such ejectment is intended to be tried; and any defendant in such action may, at any time before the trial thereof, apply to a judge by summons to stay or set aside the proceedings, or to postpone the trial until the next assizes; and it shall be lawful for the judge, in his discretion, to make such order in the said cause as to him shall seem expedient.

Saving of former remedies.

218. Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for, otherwise than hereinbefore expressly enacted.

In ejectment by mortgagee, the mortgagor's rendering the principal, interest, and costs in court shall be deemed a full satisfaction, and the court may compel the mortgagee to reconvey.

219. Where an action of ejectment shall be brought by any mortgagee, his heirs, executors, administrators or assigns, for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit shall be then depending in any of her majesty's courts of equity in that part of Great Britain called England, for or touching the foreclosing or redeeming of such mortgaged lands, tenements or hereditaments, if the person having right to redeem such mortgaged lands, tenements or hereditaments, and who shall appear and become defendant in such action, shall, at any time pending such action, pay unto such mortgagee, or, in case of his refusal, shall bring into court, where such action shall be depending, all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit at law or in equity upon such mortgage (such money for principal, interest and costs, to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose), the monies so paid to such mortgagee, or brought

into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court shall and may discharge every such mortgagor or defendant of and from the same accordingly; and shall and may, by rule of the same court, compel such mortgagee, at the costs and charges of such mortgagor, to assign, surrender, or reconvey such mortgaged lands, tenements, and hereditaments, and such estate and interest as such mortgagee has therein, and deliver up all deeds, evidences, and writings in his custody, relating to the title of such mortgaged lands, tenements and hereditaments, unto such mortgagor, who shall have paid or brought such monies into the court, his heirs, executors or administrators, or to such other person or persons as he or they shall for that purpose nominate or appoint.

Not to extend to cases where the right of redemption is controverted, or the money due not adjusted;

220. Nothing herein contained shall extend to any case where the person against whom the redemption is or shall be prayed, shall (by writing under his hand, or the hand of his attorney, agent, or solicitor, to be delivered before the money shall be brought into such court of law, to the attorney or solicitor for the other side,) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or shall be admitted on the other side; or to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; or shall be any prejudice to any subsequent mortgage or subsequent incumbrance, anything herein contained to the contrary thereof in anywise notwithstanding.

or to prejudice any subsequent mortgage.

Jurisdiction of courts and judges.

221. The several courts and the judges thereof respectively shall and may exercise over the proceedings the like jurisdiction as heretofore exercised in the action of ejectment, so as to ensure a trial of the title, and of actual ouster, when necessary, only, and for all other purposes for which such jurisdiction may at present be exercised; and the provisions of all statutes not inconsistent with the provisions of this act, and which may be applicable to the altered mode of proceeding, shall remain in force and be applied thereto.

Amendment.

And whereas the power of amendment now vested in the courts and the judges thereof is insufficient to enable them to prevent the failure of justice by reason of mistakes and objections of form: be it enacted as follows:

Amendment.

222. It shall be lawful for the superior courts of common law, and every judge thereof, and any judge sitting at nisi prius, at all times to amend all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend, or not; and all such amendments may be made with or without costs, and upon such terms as to the court or judge may seem fit; and all such

amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made.

Power to Judges to make Rules and frame Writs and Proceedings.

And in order to enable the courts and judges to carry this act thoroughly into effect, and to enable them from time to time to make rules and regulations and to frame writs and proceedings for that purpose, be it enacted as follows:

General rules may be made by the judges.

223. It shall be lawful for the judges of the said courts, or any eight or more of them, of whom the chiefs of each of the said courts shall be three, from time to time to make all such general rules and orders for the effectual execution of this act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters herein contained, and the performance thereof, and for apportioning the costs of issues, and for the purpose of enforcing uniformity of practice in the allowance of costs in the said courts, and of ensuring as far as may be practicable an equal division of the business of taxation amongst the masters of the said courts, as in their judgment shall be necessary or proper, and for that purpose to meet from time to time as occasion may require: and it shall further be lawful for the judges of the said courts, or any eight or more of them, of whom the chiefs of each of the said courts shall be three, from time to time to exercise all the powers and authority given to them by an act of parliament passed in the session of parliament held in the thirteenth and fourteenth years of the reign of her present Majesty, intituled "An Act to enable the Judges of the Common Law at Westminster to alter the Forms of Pleading," with respect to any matter herein contained relative to practice or pleading, anything in this act to the contrary notwithstanding; and the provisions of the said last-mentioned act as to the rules, orders, or regulations made in pursuance thereof shall be held applicable to any rules, orders, or regulations which shall be made in pursuance of this act: provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said courts, or the judges thereof, to make rules or orders, or otherwise to regulate and dispose of the business therein.

13 & 14 Vict. c. 16.

New forms of writs and other proceedings.

224. Such new or altered writs and forms of proceedings may be issued, entered, and taken, as may by the judges of the said courts, or any eight or more of them, of whom the chiefs of each of the said courts shall be three, be deemed necessary or expedient for giving effect to the provisions herein-before contained, and in such forms as the judges of such courts respectively shall from time to time think fit to order; and such writs and proceedings shall be acted upon and enforced in such and the same manner as writs and proceedings of the said courts are now acted upon and enforced, or as near thereto as the circumstances of the case will admit; and any existing writ or proceeding, the form of which shall be in any manner altered in pursuance of this act, shall never-

theless be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this act.

Rules may be made by each court for government of its officers.

225. It shall and may be lawful to and for the judges of each of the said courts from time to time to make such rules and orders for the government and conduct of the ministers and officers of their respective courts, in and relating to the distribution and performance of the duties and business to be done and performed in the execution of this act, as such judges may think fit and reasonable: provided always, that no additional charge be thereby imposed on the suitors.

Effect of Injunction.

And whereas it is expedient that injunctions and orders to stay proceedings should be rendered more effectual, be it enacted as follows:

Injunctions and orders to stay proceedings to have a specific effect.

226. In case any action, suit, or proceeding in any court of law or equity shall be commenced, sued, or prosecuted, in disobedience of and contrary to any writ of injunction, rule, or order of either of the superior courts of law or equity at Westminster, or of any judge thereof, in any other court than that by or in which such injunction may have been issued, or rule or order made, upon the production to any such other court or judge thereof of such writ of injunction, rule, or order, the said other court (in which such action, suit, or proceeding may be commenced, prosecuted, or taken), or any judge thereof, shall stay all further proceedings contrary to any such injunction, rule, or order; and thenceforth all further and subsequent proceedings shall be utterly null and void to all intents and purposes: provided always, that nothing herein contained shall be held to diminish, alter, abridge, or vary the liability of any person or persons commencing, suing, or prosecuting any such action, suit, or proceeding contrary to any injunction, rule, or order of either of the courts aforesaid, to any attachment, punishment, or other proceeding to which any such person or persons are, may, or shall be liable in cases of contempt of either of the courts aforesaid, in regard to the commencing, suing, or prosecuting such action, suit, or proceeding.

And be it enacted as follows:

Interpretation of terms.

227. In the construction of this act the word "court" shall be understood to mean any one of the superior courts of common law at Westminster in which any action is brought; and the word "judge" shall be understood to mean a judge or baron of any of the said courts; and the word "master" shall be understood to mean a master of any of the said courts; and the word "action" shall be understood to mean any personal action brought by writ of summons in any of the said courts; and no part of the united kingdom of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, or Sark, nor any islands adjacent to any of them, being part of the dominions of her Majesty, shall be deemed to be "beyond the seas" within the meaning of this act:

and wherever in this act, in describing or referring to any person or party, matter or thing, any word importing the singular number or masculine gender is used, the same shall be understood to include and shall be applicable to several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it otherwise be provided, or there be something in the subject or context repugnant to such construction.

Her majesty may direct all or part of this act to extend to any court of record.

228. It shall be lawful for her Majesty from time to time, by an order in council, to direct that all or any part of the provisions of this act or of the rules to be made in pursuance thereof shall apply to all or any court or courts of record in England or Wales, and within one month after such order shall have been made and published in the London Gazette such provisions and rules respectively shall extend and apply in manner directed by such order; and any such order may be in like manner from time to time altered or annulled.

Certain of the provisions of this act to extend and apply to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham.

229. And whereas it is expedient to apply the provisions of this act, with the requisite modifications, to the superior courts of the counties palatine of Lancaster and Durham respectively: all the enactments and provisions of this act with respect to writs for the commencement of personal actions, except such as relate to the teste thereof in the name of a judge, to concurrent writs, and to the service of writs elsewhere than in the counties palatine of Lancaster and Durham respectively, and proceedings against parties residing out of the jurisdiction of the said courts; and all the provisions of this act with respect to the appearance of the defendant and proceedings of the plaintiff in default of appearance; and with respect to the joinder of parties to actions and joinder of causes of action; and with respect to the determination of questions raised by consent of the parties without pleading; and with respect to the language and form of pleadings, and provisions as to pleadings, profert, oyer, setting out of documents; and with regard to the time and manner of declaring; and as to pleas and subsequent pleadings, and incident thereto; and examples and forms of pleading and causes of action; and with respect to judgment by default, and the mode of ascertaining the amount to be recovered thereupon and incident thereto; and all the provisions of this act with respect to juries and jury process; and with respect to the admission of documents; and with respect to the expenses of execution and the remaining in force and renewal of execution, the discharging of parties from execution, and charging in execution persons in prison; and with respect to proceedings for the revival of judgments and other proceedings by and against persons not parties to the record; and with respect to the effect of death, marriage, and bankruptcy upon the proceedings in an action; and with respect to the proceedings upon motions to arrest the judgment and for judgment non obstante veredicto; and with respect to proceedings in error

subject to the proviso herein-after contained; and all the provisions of this act with respect to the action of ejectment, and incident thereto; and with respect to the power of amendment by courts and the judges thereof, shall extend and apply to the court of common pleas at Lancaster and the court of pleas at Durham, and actions and proceedings therein respectively.

Powers given by this act to the judges of the superior courts at Westminster to make rules, &c., may be exercised by judges of the Court of Common Pleas at Lancaster and Court of Pleas at Durham as to those courts.

230. All the powers given by this act to the judges of the said superior courts at Westminster to make rules and regulations for the execution of this act, and to frame writs and proceedings for that purpose; and to the judges of the said respective courts to make rules or orders for the government and conduct of the ministers and officers thereof; and all other powers by this act given to or vested in the judges of the said superior courts at Westminster to be exercised by more than one of them, except the powers and authority given by the said act of parliament passed in the session of parliament held in the thirteenth and fourteenth years of the reign of her present Majesty, intituled "An Act to enable the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading," shall and may be exercised by the respective judges of the said court of common pleas at Lancaster and court of pleas at Durham, being judges of one of the said common law courts at Westminster, or any two of them, with respect to the said court of common pleas at Lancaster and court of pleas at Durham respectively, and the ministers and officers thereof, and matters and proceedings therein, within the jurisdiction of the same courts respectively; and all powers under this act exercisable by any one judge of the superior courts at Westminster shall and may be exercisable by one judge of the said superior courts of the said counties palatine, being also a judge of one of the said courts at Westminster, as to matters and proceedings in the said superior courts of the said counties palatine.

Judges may make rules for applying other provisions of this act to Court of Common Pleas at Lancaster and Court of Pleas at Durham.

231. It shall and may be lawful to and for the judges of each of the said courts of common pleas at Lancaster and pleas at Durham, being judges of one of the superior courts at Westminster, or any two of them, from time to time to make rules and orders for applying any of the other provisions of this act to the said respective superior courts of the said counties palatine, and matters and proceedings therein and parties thereto, with such modifications and alterations with reference to the constitution and peculiar circumstances of such court, as they may think fit and reasonable; and for modifying any of the provisions hereby applied to such last-mentioned courts respectively with reference to such constitution and peculiar circumstances; and from time to time to rescind, amend, or alter such rules or orders; and that such rules or orders, subject to such power of recission, amendment, and alteration, shall have the same force as if the same were made by and embodied in this act.

Provisions to apply to masters of

232. Provided always, that all the provisions of this act applicable to masters of the said courts at Westminster shall

courts at Westminster to apply to prothonotaries of Court of Common Pleas at Lancaster and Court of Pleas at Durham, and their deputies, &c.

apply to the respective prothonotaries of the court of common pleas at Lancaster and court of pleas at Durham, and their respective deputies, who may singly exercise, with reference to matters and proceedings in the last-mentioned courts respectively, the powers hereby given to any one or more of the masters of the superior courts at Westminster; and that such respective officers shall record the proceedings of trials of causes depending in the said respective courts, and draw up and return posteas on records from the superior courts at Westminster, tried in the said counties palatine respectively, and officiate at the trial of such causes therein as heretofore.

As to proceedings in error.

233. Provided also, as to proceedings in error, that the Court of Queen's Bench shall still be the court of error from the said Court of Common Pleas at Lancaster and Court of Pleas at Durham; and that it shall be sufficient to transmit to the said Court of Queen's Bench a transcript of the record of any judgment or proceedings in those courts on which error is alleged; and that the judgment of the Court of Queen's Bench thereon shall be certified by one of the masters of the said Court of Queen's Bench on the said transcript, or by rule of court, as the said court may direct; and that thereupon such judgment shall be entered on the original record in the said respective Courts of Common Pleas at Lancaster and Pleas at Durham; and such further proceedings as may be necessary thereon shall be awarded by the said respective courts, subject to the right of either party to allege errors in the said judgment in the said Court of Queen's Bench, and proceed thereon as provided by this act in the case of errors alleged in actions depending in that court.

Certain provisions of 4 & 5 Will. 4, c. 62, and 2 & 3 Vict. c. 16, repealed.

234. From the time when this act shall commence and take effect so much of a certain act of parliament passed in the fifth year of the reign of his late majesty King William the Fourth, intituled "An Act for improving the Practice and Proceedings in the Court of Common Pleas of the County Palatine of Lancaster," and so much of a certain other act of parliament passed in the second year of the reign of her present Majesty, intituled "An Act for improving the Practice and Proceedings of the Court of Pleas of the County Palatine of Durham and Sadberge," as relate to the duration of writs; and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this act, and any proceedings taken or to be taken thereon; but that the other provisions of the said last-mentioned acts of parliament, so far as they are not altered by or inconsistent with the provisions of this act, shall remain in force.

Short title of act.

235. In citing this act in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Common Law Procedure Act, 1852."

Act not to extend to Ireland or Scotland.

236. Nothing in this act shall extend to Ireland or Scotland, except in the cases herein specially mentioned.

SCHEDULE (A.) referred to in the foregoing Act.

No. 1.

Writ where the Defendant resides within the Jurisdiction.

Victoria, by the grace of God, *&c.*

To C. D. of , in the county of .

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our court of , in an action at the suit of A. B.; and take notice, that in default of your so doing the said A. B. may proceed therein to judgment and execution. Witness, *&c.*

Memorandum to be subscribed on the Writ.

N.B.—This writ is to be served within (*six*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the Writ before Service thereof.

This writ was issued by E. F. of , attorney for the said plaintiff, *or* this writ was issued in person by A. B., who resides at [*mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such*].

Indorsement to be made on the Writ after Service thereof.

This writ was served by X. Y. on L. M. ["the defendant" *or* "one of the defendants"], on *Monday* the day of , 18 . (Signed) X. Y.

No. 2.

Writ where the Defendant, being a British Subject, resides out of the Jurisdiction.

Victoria, by the grace of God, *&c.*

To C. D. of , in the county of .

We command you, that within [*here insert a sufficient number of days within which the defendant might appear, with reference to the distance he may be at from England*] days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our court of , in an action at the suit of A. B.; and take notice, that in default of your so doing the said A. B. may, by leave of the court or a judge, proceed therein to judgment and execution. Witness, *&c.*

Memorandum to be subscribed on the Writ.

N.B.—This writ is to be served within (*six*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the Writ before the Service thereof.

This writ is for service out of the jurisdiction of the court, and was issued by E. F. of , attorney for the said plaintiff, [*or* "this writ was issued in person by A. B."] who resides at [*mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such*].

The indorsement required by the 8th section should be made on this writ, but should allow the defendant the time limited for appearance to pay the debt and costs.

No. 3.

Writ where the Defendant, not being a British Subject, resides out of the Jurisdiction.

Victoria, by the grace of God, *&c.*

To C. D. late of , in the county of .

We command you, that within [*here insert a sufficient number of days within which the defendant might appear, with reference to the distance he may be at from England*] days after notice of this writ is served on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our court of , in an action at the suit of A. B.; and take notice, that in default of your so doing the said A. B. may, by leave of the court or a judge, proceed therein to judgment and execution. Witness, *&c.*

Memorandum to be subscribed on the Writ.

N.B.—Notice of this writ is to be served within (*six*) calendar months from the date thereof, including the day of such date, and not afterwards.

Indorsements as in other cases.

Notice of the foregoing writ.

To G. H. late of [*Brighton in the county of Sussex*], *or* now residing at [*Paris in France*].

Take notice, that A. B. of , in the county of , England, has commenced an action at law against you C. D. in her Majesty's Court of Queen's Bench, by a writ of that court, dated the day of , A.D. 18 ; and you are required, within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing the

said A. B. may, by leave of the court or a judge, proceed thereon to judgment and execution.

[*Here state amount of claim as required by 8th section, but allowing the defendant the time limited for appearance to pay debt and costs.*]

(Signed) A. B. of &c.
or
E. F. of &c.
Attorney for A. B.

No. 4.

Special Indorsement.

[*After the indorsement required by the 8th section of this act, this special indorsement may be inserted.*]

The following are the particulars of plaintiff's claim:

1849.		£	s.	d.
June 20.	Half year's rent to this day of house and premises in street, Westminster	25	10	0
Sept. 12.	Ten sacks of flour at 40*s.*	20	0	0
Dec. 1.	Money received by defendant.....	17	0	0
		62	10	0
	Paid	15	0	0
	Balance due	£47	10	0

Or,

To butchers meat supplied between the 1st of January, 1849, and the 1st of January, 1850..... £52
Paid..... 20
Balance £32

[*If any account has been delivered, it may be referred to, with its date, or the plaintiff may give such a description of his claim as in a particular of demand, so as to prevent the necessity of an application for further particulars.*]

Or,

£50 principal and interest due on a bond dated the day of , conditioned for the payment of £100.

Or,

£90 principal and interest due on a covenant contained in a deed dated the day of , to pay £100 and interest.

Or,

A penalty of £100 under the statute 55 Geo. 3, c. 137.

Or,

£85 on a bill of exchange for £100, dated the 2nd February, 1849, accepted, *or* drawn *or* indorsed, by the defendant.

Or,

£50 on a guarantee dated the 1st of January, 1850, whereby the defendant guaranteed the due payment by E. F. of goods supplied or to be supplied to him.

[*To any of the above may be added, in cases where interest is payable,* "the plaintiff also claims interest on £ on the above sum from the date of the writ until judgment."]

N. B.—Take notice, that if a defendant served with this writ within the jurisdiction of the court do not appear according to the exigency thereof, the plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed [with interest at the rate specified] and the sum of £ for costs, and issue execution at the expiration of eight days from the last day for appearance.

No. 5.

In the Queen's Bench.

On the day of , A.D. 1850.

[*Day of signing the judgment.*]

England } A. B. in his own person [*or* "by his
to wit. } attorney"] sued out a writ of summons against C. D., indorsed according to the Common Law Procedure Act, 1852, as follows:

[*Here copy special indorsement.*]

And the said C. D. has not appeared: therefore it is considered that the said A. B. recover against the said C. D. £ , together with £ for costs of suit.

No. 6.

In the Queen's Bench.

The day of , in the year of our Lord 18 .

Yorkshire } Whereas A. B. has sued C. D., and
to wit. } affirms and denies.

[*Here state the question or questions of fact to be tried.*]

And it has been ordered by the Honourable Mr. Justice according to The Common Law Procedure Act, 1852, that the said question shall be tried by a jury: therefore let the same be tried accordingly.

No. 7.

Form of Rule or Summons where a Judgment Creditor applies for Execution against a Judgment Debtor.

[*Formal parts as at present.*]

C. D. show cause why A. B. [*or as the case may be*] should not be at liberty to enter a suggestion upon the roll in an

action wherein the said A. B. was plaintiff and the said C. D. was defendant, and wherein the said A. B. obtained judgment for £ against the said C. D., on the day of , that it manifestly appears to the court that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay to the said A. B. the costs of this application, to be taxed.

[Note.—*The above form may be modified so as to meet the case of an application by or against the representative of a party to the judgment.*]

No. 8.

Form of Suggestion that the Judgment Creditor is entitled to Execution against the Judgment Debtor.

And now on the day of it is suggested and manifestly appears to the court, that the said A. B. [*or* "C. D., as executor of the last will and testament of the said A. B. deceased," *or as the case may be*], is entitled to have execution of the judgment aforesaid against the said E. F. [*or* "against G. H. as executor of the last will and testament of the said E. F., *or as the case may be*]: therefore it is considered by the court that the said A. B., [*or* "C. D., as such executor as aforesaid," *or as the case may be*], ought to have execution of the said judgment against the said E. F. [*or* "against G. H., as such executor as aforesaid," *or as the case may be.*]

No. 9.

Form of Writ of Revivor.

Victoria, by the grace of God, *&c.*, to E. F. of , greeting.

We command you that, within eight days after the service of this writ upon you, inclusive of the day of such service, you appear in our Court of , to show cause why A. B. [*or* "C. D., as executor of the last will and testament of the said A. B., deceased," *or as the case may be*], should not have execution against you [*if against a representative here insert*, "as executor of the last will and testament of deceased", *or as the case may be*] of a judgment whereby the said A. B. [*or as the case may be*] on the day of , in the said court recovered against you [*or as the case may be*] £ ; and take notice, that in default of your so doing the said A. B. [*or as the case may be*] may proceed to execution.

Witness, *&c.*

No. 10.

In the Queen's Bench.

The day of , in the year of our Lord 18 .

[*The day of lodging note of error.*]

A. B. and C. D.

The plaintiff [*or* "defendant"] says that there is error in law in the record and proceedings in this action; and the defendant [*or* "plaintiff"] says that there is no error therein.

(Signed) A. B., plaintiff,
[*or* "C. D., defendant."]
[*or* "E. F., attorney for plaintiff" *or* "defendant."]

No. 11.

The day of , in the year of our Lord 18 .

[*The day of making the entry on the roll.*]

The plaintiff [*or* "defendant"] says that there is error in the above record and proceedings, and the defendant [*or* "plaintiff"] says there is no error therein.

No. 12.

In the Queen's Bench.

The day of , in the year of our Lord 18 .

[*The day of lodging note of error.*]

A. B. and C. D. in error.

The plaintiff [*or* "defendant"] says that there is error in fact in the record and proceedings in this action, in the particulars specified in the affidavit hereunto annexed.

(Signed) A. B., plaintiff.
[*or* "C. D., defendant."
[*or* "E. F., attorney for plaintiff" *or* "defendant."]

No. 13.

EJECTMENT.

Form of Writ.

Victoria, *&c.*, to X., Y., Z., and all persons entitled to defend the possession of [*describe the property with reasonable certainty*], in the parish of , in the county of , to the possession whereof A., B., and C., some or one of them claim to be [*or* "to have been on and since the day of , A.D. "] entitled, and to eject all other persons

therefrom; these are to will and command you, or such of you as deny the alleged title, within sixteen days after service hereof, to appear in our court of to defend the said property, or such part thereof as you may be advised; in default whereof judgment may be signed, and you turned out of possession.

Witness, *&c.*

No. 14.

Judgment in Ejectment in case of Nonappearance.

In the Queen's Bench.

The day of , 18 .

[*Date of writ.*]

Lancashire } On the day and year above written, a writ of
to wit. } our lady the queen issued forth of this court in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and no appearance has been entered or defence made to the said writ: therefore it is considered that the said [*here insert the names of the persons in whom title is alleged in the writ*] do recover possession of the land in the said writ mentioned, with the appurtenances.

No. 15.

In the Queen's Bench:

On the day of , A.D. 18 .

Cumberland } On the day and year above written, a writ of our
to wit. } Lady the Queen issued forth of this court, in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and C. D. has, on the day of , appeared by his attorney [*or* "in person"] to the said writ, and has defended for a part of the land in the writ mentioned; that is to say [*here state the part*], and no appearance has been entered or defence made to the said writ, except as to the said part: Therefore it is considered that the said A. B. [*the claimant*] do recover possession of the land in the said writ mentioned, except the said part, with the appurtenances, and that he have execution thereof forthwith; and as to the rest, let a jury come, *&c.*

No. 16.

In the Queen's Bench:

On the day of , A.D. 18 .

Cumberland } On the day and year above written, a writ of our
to wit. } Lady the Queen issued forth of this court, in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and C. D.

has, on the day of , appeared by his attorney [*or* "in person"] to the said writ, and defended for the whole of the land therein mentioned: Therefore let a jury come, *&c.*

No. 17.

Afterwards on the day of , A.D. , before and , justices of our Lady the Queen assigned to take the assizes in and for the within county, come the parties within mentioned; and a jury of the said county being sworn to try the matters in question between the said parties, upon their oath say, that A. B. [*the claimant*] within mentioned, on the day of , A.D. , was, and still is, entitled to the possession of the land within mentioned, as in the writ alleged: Therefore, *&c.*

No. 18.

In the Queen's Bench:
On the day of , 18 .
[*Date of writ.*]

Lancashire } On the day and year above written, a writ of our
to wit. } Lady the Queen issued forth of this court, in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and C. D. has, on the day of , appeared by his attorney [*or* "in person"] to the said writ, and A. B. has discontinued the action: Therefore it is considered that the said C. D. be acquitted, and that he recover against the said A. B. £ for his costs of defence.

No. 19.

In the Queen's Bench:
The day of , 18 .
[*Date of writ.*]

Lancashire } On the day and year above written, a writ of our
to wit. } Lady the Queen issued forth of this court, in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and C. D. has, on the day of , appeared by his attorney [*or* "in person"] to the said writ, and A. B. has failed to proceed to trial, although duly required so to do: Therefore it is considered that the said C. D. be acquitted, and that he recover against the said A. B. £ for his costs of defence.

No. 20.

In the Queen's Bench.
The day of , 18 .
[*Date of writ.*]

Lancashire } On the day and year above written, a writ of our
to wit. } Lady the Queen issued forth of this Court in these words; that is to say,

Victoria, by the grace of God [*here copy the writ*]; and C. D. has, on the day of , appeared by his attorney *or* ["in person"] to the said writ, and the said C. D. has confessed the said action [*or*, "has confessed the said action as to part of the said land, that is to say," *here state the part*]: Therefore it is considered that the said A. B. do recover possession of the land in the said writ mentioned [*or*, "of the said part of the said land"], with the appurtenances, and £ for costs.

No. 21.

In the Queen's Bench.
The day of , A.D. 18 .
[*Date of writ.*]

Yorkshire } On the day and year above written, a writ of our
to wit. } Lady the Queen issued forth of this court, with a notice thereunder written, the tenor of which writ and notice follows in these words; that is to say,

[*Here copy the writ and notice, which latter may be as follows:*

"Take notice, that you will be required, if ordered by the court or a judge, to give bail by yourself and two sufficient sureties, conditioned to pay the costs and damages which shall be recovered in this action."]

And C. D. has appeared by his attorney [*or* "in person"] to the said writ, and has been ordered to give bail, pursuant to the statute, and has failed so to do: Therefore it is considered that the said [*here insert name of landlord*] do recover possession of the land in the said writ mentioned, with the appurtenances, together with £ for costs of suit.

SCHEDULE (B.)

FORMS OF PLEADINGS.

STATEMENTS OF CAUSES OF ACTION.

On Contracts.

1. Money payable by the defendant to the plaintiff for goods sold. [*these words* "money payable," *&c. should precede money counts like* 1 *to* 14, *but need only be inserted in the first*] goods bargained and sold by the plaintiff to the defendant.

Work and materials.

2. Work done and materials provided by the plaintiff for the defendant at his request.

Money lent.

3. Money lent by the plaintiff to the defendant.

Money paid.

4. Money paid by the plaintiff for the defendant at his request.

Money received.

5. Money received by the defendant for the use of the plaintiff.

Account stated.

6. Money found to be due from the defendant to the plaintiff on accounts stated between them.

For an estate sold.

7. A messuage and lands sold and conveyed by the plaintiff to the defendant.

For goodwill.

8. The goodwill of a business of the plaintiff, sold and given up by the plaintiff to the defendant.

For the use of a house and land.

9. The defendant's use, by the plaintiff's permission, of messuages and lands of the plaintiff.

For the use of a fishery.

10. The defendant's use, by the plaintiff's permission, of a fishery of the plaintiff.

For copyhold fines.

11. Fines payable by the defendant as tenant of customary tenements of the manor of to the plaintiff as lord of the said manor, for the admission of the defendant into the said customary tenements.

For hire of goods, &c.

12. The hire of [*as the case may be*], by the plaintiff let to hire to the defendant.

For freight.

13. Freight for the conveyance by the plaintiff for the defendant at his request of goods in ships.

For demurrage.

14. The demurrage of a ship of the plaintiff kept on demurrage by the defendant.

Payee against maker of note.

15. That the defendant, on the day of , A.D. , by his promissory note, now overdue, promised to pay to the plaintiff £ [*two*] months after date, but did not pay the same.

Indorsee against indorser of note.

16. That one A., on, *&c.* [*date*], by his promissory note, now overdue, promised to pay to the defendant, or order, £ [*two*] months after date; and the defendant indorsed the same to the plaintiff; and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same.

Drawee against acceptor of bill.

17. That the plaintiff, on, *&c.* [*date*], by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff £ [*two*] months after date; and the defendant accepted the said bill, but did not pay the same.

Payee against drawer.

18. That the defendant, on, *&c.* [*date*], by his bill of exchange, directed to A., required A. to pay to the plaintiff £ [*two*] months after date; and the said bill was duly presented for acceptance, and was dishonoured, of which the defendant had due notice, but did not pay the same.

Breach of promise of marriage.

19. That the plaintiff and defendant agreed to marry one another, and a reasonable time for such marriage has elapsed, and the plaintiff has always been ready and willing to marry the defendant, yet the defendant has neglected and refused to marry the plaintiff.

20. That the plaintiff and defendant agreed to marry one

another on a day now elapsed, and the plaintiff was ready and willing to marry the defendant on that day, yet the defendant neglected and refused to marry the plaintiff.

Warranty of a horse.

21. That the defendant, by warranting a horse to be then sound and quiet to ride, sold the said horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

For not loading pursuant to charter-party.

22. That the plaintiff and the defendant agreed, by charter-party, that the plaintiff's ship called the "Ariel" should with all convenient speed sail to R., or so near thereto as she could safely get, and that the defendant should there load her with a full cargo of tallow or other lawful merchandise, which she should carry to H., and there deliver, on payment of freight, £ per ton, and that the defendant should be allowed ten days for loading, and ten for discharge, and ten days for demurrage, if required, at £ per day; and that the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said ship at R., and that the time for so doing has elapsed, yet the defendant made default in loading the agreed cargo.

Upon a lease for rent.

23. That the plaintiff let to the defendant a house, No. 401, Piccadilly, for seven years, to hold from the day of , A. D. , at £ a year, payable quarterly, of which rent quarters are due and unpaid.

Upon a covenant to repair.

24. That the plaintiff by deed let to the defendant a house, No. 401, Piccadilly, to hold for seven years from the day of , A. D. , and the defendant by the said deed covenanted with the plaintiff well and substantially to repair the said house during the said term [*according to the covenant*], yet the said house was during the said term out of good and substantial repair.

For Wrongs independent of Contract.

Trespass to land.

25. That the defendant broke and entered certain land of the plaintiff, called the Big Field, and depastured the same with cattle.

Assault, battery and false imprisonment.

26. That the defendant assaulted and beat the plaintiff, gave him into custody to a policeman, and caused him to be imprisoned in a police office.

Criminal conversation.

27. That the defendant debauched and carnally knew the plaintiff's wife.

Wrongful conversion of goods.

28. That the defendant converted to his own use, or wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods; that is to say, iron, hops, household furniture [*or as the case may be*].

Wrongful detention of property, &c.

29. That the defendant detained from the plaintiff his title deeds of land called Belmont in the county of ; that is to say, [*describe the deeds*].

Diverting water from a mill.

30. That the plaintiff was possessed of a mill, and by reason thereof was entitled to the flow of a stream for working the same, and the defendant, by cutting the bank of the said stream, diverted the water thereof away from the said mill.

Infringement of a patent.

31. That the plaintiff was the first and true inventor of a certain new manufacture, that is to say, of "certain improve-

ments in the manufacture of sulphuric acid," and thereu
her majesty Queen Victoria, by letters patent under the gr
seal of England, granted the plaintiff the sole privilege
make, use, exercise, and vend the said invention within E
land for the term of fourteen years from the day of
A. D. , subject to a condition that the plaintiff sho
within six calendar months next after the date of the said let
patent cause to be enrolled in the High Court of Chanc
an instrument in writing under his hand and seal, particula
describing and ascertaining the nature of his said inventi
and in what manner the same was to be and might be p
formed, and the plaintiff did within the time prescribed f
the said condition, and the defendant during the said te
did infringe the said patent right.

Defamation of character.

32. That the defendant falsely and maliciously spoke a
published of the plaintiff the words following; that is to s
" he is a thief;"

[*if there be any special damage, here state it with such reas
able particularity as to give notice to the defendan
the peculiar injury complained of; for instance,*]

whereby the plaintiff lost his situation as gamekeeper in
employ of A.

33. That the defendant falsely and maliciously printed a
published of the plaintiff in a newspaper called "
the words following; that is to say, " he is a regular pro
under bankruptcies," the defendant meaning thereby that
plaintiff had proved and was in the habit of proving fictitio
debts against the estates of bankrupts, with the knowlec
that such debts were fictitious.

Commencement of Plea.

34. The defendant by his attorney [*or* " in person
says [*here state the substance of the plea*].

35. And for a second plea the defendant says [*here st
the second plea*].

Pleas in Actions on Contracts.

Denial of debt.

36. That he never was indebted as alleged.

[*This plea is applicable to declarations like those numbered* 1
14.]

Denial of contract.

37. That he did not promise as alleged.

[*This plea is applicable to other declarations on simple co
tracts, not on bills and notes, such as those numbered* 19 *to*
It would be unobjectionable to use " did not warrant," " did n
agree," *or any other appropriate denial.*]

Denial of deed.

38. That the alleged deed is not his deed.

Statute of Limitations.

39. That the alleged cause of action did not accrue with
six years [*state the period of limitation applicable to the ca*
before this suit.

40. That before action he satisfied and discharged the laintiff's claim by payment. Payment.

41. That the plaintiff at the commencement of this suit as, and still is, indebted to the defendant in an amount equal o the plaintiff's claim, for [*here state the cause of set-off, as in declaration; see forms, ante*], which amount the defendant is illing to set off against the plaintiff's claim. Set-off.

42. That *after the alleged claim accrued, and before this suit,* he plaintiff by deed released the defendant therefrom. Release.

Pleas in Actions for Wrongs independent of Contract.

43. That he is not guilty. Not guilty.

44. That he did what is complained of by the plaintiff's eave. Leave and licence.

45. That the plaintiff first assaulted the defendant, who hereupon necessarily committed the alleged assault in his wn defence. Self-defence.

46. That the defendant, at the time of the alleged trespass, vas possessed of land the occupiers whereof for twenty years efore this suit enjoyed as of right and without interruption a vay on foot and with cattle from a public highway over the aid land of the plaintiff to the said land of the defendant, and rom the said land of the defendant over the said land of the laintiff to the said public highway, at all times of the year, or the more convenient occupation of the said land of the lefendant, and that the alleged trespass was a use by the de- endant of the said way. Right of way.

47. That the defendant, at the time of the alleged trespass, vas possessed of land, the occupiers whereof for thirty years efore this suit enjoyed as of right and without interruption, ommon of pasture over the said land of the plaintiff for all heir cattle, levant and couchant, upon the said land of the lefendant, at all times of the year, as to the said land of the lefendant appertaining, and that the alleged trespass was a se by the defendant of the said right of common. Right of common.

REPLICATIONS.

48. The plaintiff takes issue upon the defendant's 1st, 2d, &c. pleas. Joinder of issue.

49. The plaintiff as to the second plea says [*here state the answer to the plea as in the following forms*]. Replication to pleas containing new matter.

50. That the alleged release is not the plaintiff's deed. To plea of release.

51. That the alleged release was procured by the fraud of he defendant.

52. That the alleged set-off did not accrue within six years efore this suit. To plea of set-off.

53. That the plaintiff was possessed of land whereon the lefendant was trespassing and doing damage, whereupon the laintiff requested the defendant to leave the said land, which he defendant refused to do; and thereupon the plaintiff ently laid his hands on the defendant in order to remove To self-defence.

him, doing no more than was necessary for that purp
which is the alleged first assault by the plaintiff.

To right of way.

54. That the occupiers of the said land did not for twe
years before this suit enjoy as of right and without interr
tion the alleged way.

New Assignment.

To the pleas of right of way and right of common.

55. The plaintiff, as to the and pleas, s
that he sues not for the trespasses therein admitted, but
trespasses committed by the defendant in excess of the alle
rights, and also in other parts of the said land and on o
occasions, and for other purposes than those referred to in
said pleas.

[*If the plaintiff replies and new assigns, the new assign*
may be as follows:]

56. And the plaintiff, as to the and pl
further says, that he sues not only for the trespasses in t
pleas admitted, but also for, *&c.*

[*If the plaintiff replies and new assigns to some of the pl*
and new assigns only to the other, the form may be as follows:

57. And the plaintiff, as to the and pl
further says, that he sues not for the trespasses in the
pleas [*the pleas not replied to*] admitted, but for the trespa
in the pleas [*the pleas replied to*] admitted, and also
&c.

3 & 4 Vict. Cap. 24.

An Act to repeal Part of an Act of the Forty-third Year of the Reign of Queen Elizabeth, intituled "An Act to avoid trifling and frivolous Suits in Law in Her Majesty's Courts in Westminster," and of an Act of the Twenty-second and Twenty-Third year of the Reign of King Charles the Second, intituled "An Act for laying Impositions on Proceedings at Law;" and to make further Provisions in lieu thereof. [3rd July, 1840.]

Whereas an act passed in the forty-third year of the reign of Queen Elizabeth, intituled "An Act to avoid trifling and frivolous Suits in Law in her Majesty's Court in Westminster," and another Act in the twenty-second and twenty-third years of the reign of King Charles the Second, intituled "An Act for laying Impositions on Proceedings at Law," which recites that many good subjects of this realm have been and daily are undone by such suits, contrary to the intention of the said statute of Queen Elizabeth; but the same evil, notwithstanding, doth still prevail and increase, and it is expedient to make further provisions for the prevention thereof: Now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the said recited Act of the forty-third of Elizabeth, so far as it relates to costs in actions of trespass, or trespass on the case, and so much of the twenty-second and twenty-third of Charles the Second as relates to costs in personal actions, be and they are hereby repealed.

43 Eliz. c. 6.

22 & 23 Car. 2. c. 9.

Recited acts in part repealed.

2. And be it enacted, that if the plaintiff in any action of trespass, or of trespass on the case, brought or to be brought in any of her Majesty's Courts at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Common Pleas at Durham, shall recover by the verdict of a jury less damages than forty shillings, such plaintiff shall not be entitled to recover or obtain from the defendant, in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the judge or presiding officer before whom such verdict shall be obtained shall immediately afterwards certify on the back of the record, or on the writ of trial or writ of inquiry, that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in respect of which the action was brought was wilful and malicious.

Costs not to be recovered in action of trespass, or of trespass on the case, where damages recovered are less than 40*s.*, unless upon judge's certificate, &c.

Act not to extend to deprive plaintiffs of costs in actions for trespass.

3. Provided always, and be it enacted, that nothing herein contained shall extend to or be construed to extend to deprive any plaintiffs of costs in any action or actions brought for a trespass or trespasses over any lands, commons, wastes, closes, woods, plantations, or enclosures, or for entering into any dwellings, outbuildings, or premises in respect of which any notice not to trespass thereon or therein shall have been previously served, by or on behalf of the owner or occupier of the land trespassed over, upon or left at the last reputed or known place of abode of the defendant or defendants in such action or actions.

5 & 6 Vict. Cap. 97.

An Act to Amend the Law relating to Double Costs, Notices of Action, Limitations of Actions, and Pleas of the General Issue, under certain Acts of Parliament.

[10th August, 1842.]

Whereas divers Acts of Parliament, public, local and personal, contain enactments or provisions relating to the recovery of double, treble or other costs in certain cases, and to the pleading of the general issue and the giving any special matter in evidence at any trial to be had for any matter done in pursuance of or under the authority of the said Acts, and to the giving of notice of action before any action shall be commenced: And whereas it is expedient that the law should be altered in such respects: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of any clause, enactment, or provision in any Act or Acts commonly called public, local and personal, or local and personal, or any Act or Acts of a local or personal nature, whereby it is enacted or provided that either double or treble costs, or any other than the usual costs between party and party, shall or may be recovered, shall be and the same are hereby repealed: Provided always, that in lieu thereof the usual costs between party and party shall and may be recovered, and no more.

Repeal of provision in local and personal acts giving double and treble costs.

Repealing provision in public acts giving double and treble costs.

2. And be it enacted, that so much of any clause, enactment, or provision in any public Act or Acts, not local or personal, whereby it is enacted or provided that either double or treble costs, or any other than the usual costs between party and party, shall or may be recovered, shall be and the same are hereby repealed: Provided always, that

instead of such costs the party or parties heretofore entitled under such last-mentioned Acts to such double, treble, or other costs shall receive such full and reasonable indemnity as to all costs, charges, and expenses incurred in and about any action, suit, or other legal proceeding, as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

Repeal of provision in local and personal acts allowing general issue.

3. And be it enacted, that so much of any clause or provision in any Act or Acts commonly called public local and personal, or local and personal, or in any Act or Acts of a local and personal nature, whereby any party or parties are entitled or permitted to plead the general issue only and to give any special matter in evidence without specially pleading the same, shall be and the same is hereby repealed.

Uniformity of notice of action.

4. And whereas it is expedient that the law should be uniform with respect to notice of action in all cases where such notice of action is required; be it therefore enacted, that from and after the passing of this Act, in all cases where notice of action is required, such notice shall be given one calendar month at least before any action shall be commenced; and such notice of action shall be sufficient, any Act or Acts to the contrary thereof notwithstanding.

General limitation of actions under local and personal acts.

5. And whereas divers Acts, commonly called public local and personal, or local and personal Acts, and divers other Acts of a local and personal nature, contain clauses limiting the time within which actions may be brought for any thing done in pursuance of the said Acts respectively: And whereas the periods of such limitations vary very much, and it is expedient that there should be one period of limitation only; be it therefore enacted, that from and after the passing of this Act the period within which any action may be brought for any thing done under the authority or in pursuance of any such Act or Acts shall be two years, or in case of continuing damage, then within one year after such damage shall have ceased; and that so much of any clause, provision, or enactment by which any other time or period of limitation is appointed or enacted shall be and the same is hereby repealed.

Actions, &c. brought before passing of Act not affected.

6. Provided always and be it enacted, that nothing herein contained shall extend, or be construed to extend, to any action, bill, plaint, or information, or any legal proceeding of any kind whatsoever, commenced before the passing of this Act, but such proceedings may be thereupon had and taken in all respects as if this Act had not passed.

TABLE OF OFFICERS' FEES

IN THE

SUPERIOR COURTS OF COMMON LAW.

In pursuance of an Act, passed in the session of Parliament held in the fifteenth and sixteenth years of the reign of Her Majesty, chapter seventy-three, entitled "An Act to make provision for a permanent Establishment of Officers to perform the duties at Nisi Prius, in the Superior Courts of Common Law, and for the payment of such Officers, and of the Judges' Clerks by Salaries, and to abolish certain Offices in those Courts:" We, the undersigned, being Two of the Commissioners of Her Majesty's Treasury, have caused the undermentioned Tables of Fees to be prepared, specifying the Fees proper to be demanded and taken in the Offices undermentioned, and at the Judges' Chambers, in the Superior Courts of Common Law; and that all other Fees in such Offices and Chambers should be abolished, namely:—

Offices of the Masters of the Three Superior Courts.

	£	s.	d.
Every writ (except writ of trial or subpœna)	0	5	0
Every concurrent, alias, pluries or renewed writ	0	2	6
Every writ of trial	0	2	0
Every writ of subpœna before a judge or master	0	2	0
——————————— before the sheriff	0	1	0
Every appearance entered	0	2	0
——————————— each defendant after the first	0	1	0
Filing every affidavit, writ, or other proceeding	0	2	0
Amending every writ, or other proceeding	0	2	0
Every ordinary rule	0	1	0
Every special rule, not exceeding 6 folios	0	4	0
——————————— exceeding 6 folios, per folio.....	0	0	6
Note.—Plans, sections, &c. accompanying rules to be paid for by the party taking the rule, according to the actual cost.			
Every judgment by default	0	5	0
Every final judgment, otherwise than judgment by default	0	10	0

	£.	s.	d.
Taxing every bill of costs, not exceeding 3 folios	0	2	0
——— exceeding 3 folios, when taxed as between party and party, per folio	0	0	6
——— exceeding 3 folios, when taxed as between attorney and client, or where the attorney taxes his own bill, per folio	0	1	0
Every reference, inquiry, examination, or other special matter, referred to the master, for every meeting, not exceeding one hour.....	0	10	0
——— for every additional hour, or less....	0	10	0
Upon payment of money into court, viz.:—			
for every sum under £50.....	0	5	0
£50 and under £100	0	10	0
£100 and above that sum	1	0	0
Every certificate	0	1	0
Office copies of præcipe, or other proceedings, per folio	0	0	6
Every search, if not more than two terms	0	0	6
——— exceeding two, and not more than four terms	0	1	0
——— exceeding four terms, or a general search	0	2	6
Every affidavit, affirmation, &c. taken before the master	0	1	0
Filing every recognizance or security in ejectment or error.....	0	2	6
Every allowance and justification of bail.....	0	3	0
For taking special bail as a commissioner	0	2	0
Filing affidavit, and inrolling articles previous to the admission of an attorney	0	5	0
Every re-admission of an attorney	0	5	0

All other fees than those before mentioned are hereby abolished, and are not to be taken by any person in the masters' offices, under any pretence whatever.

Offices of the Associates to the Three Chief Judges.

Every record of Nisi Prius, delivered to the Associate, to be entered for trial.....	1	5	0
Every trial of a cause from plaintiff.....	1	0	0
——— from defendant	0	15	0
——— If the trial continues more than one day, then for every other day, from plaintiff and defendant, each	0	10	0
Returning the postea.....	0	5	0
Every cause made remanet, at the instance of the parties, to be paid by plaintiff or defendant, as the case may be.....	0	10	0
Every cause withdrawn, to be paid by the party at whose instance it is withdrawn	0	5	0

	£.	s.	d
Re-entering every record of Nisi Prius, made remanet, &c.	0	2	0
Every reference, from plaintiff and defendant, each	0	5	0
Every amendment of any proceeding whatever	0	2	0
Every order or certificate	0	5	0
Every special case, or special verdict, in addition to the charge for ingrossing and copying, at the rate of 4*d.* per folio, from plaintiff and defendant, each	0	10	0
Attending any court or otherwise, with any record, or other proceeding, under writ of subpœna, or special order of court ..... per day	1	0	0

All other fees than those before mentioned are hereby abolished, and are not to be taken by any person in the Associates' offices, under any pretence whatever.

Chambers of the Chief and Puisne Judges.

Every summons to try an issue before the sheriff	0	1	0
Every other summons whatever, whether in term or vacation	0	2	0
Every order to try an issue before the sheriff	0	1	0
Every other order whatever of an ordinary nature	0	2	0
Every order of a special nature, such as: reference to arbitration, or attendance of witnesses at arbitration; service of process on persons residing abroad; reference to the master to fix sum for final judgment; revival of judgment, and the like	0	5	0
Every fiat, warrant, certificate, caveat, special case, special verdict, or the like	0	5	0
Every affidavit, affirmation, &c., whether in term or vacation, each deponent	0	1	0
Every affidavit kept for the purpose of being conveyed to the proper office to be filed	0	1	0
Every proceeding filed	0	2	0
Every admission of an attorney	1	0	0
Every approbation of commissioners for taking affidavits or special bail	0	2	6
Every commission for taking affidavits or special bail, exclusive of stamp duty, ingrossing and sealing	1	0	0
Every other commission for any purpose whatever, exclusive of stamp duty, ingrossing and sealing	0	10	0
Every acknowledgment by married women	0	10	0
Office copies of judge's notes, or of any other proceeding whatever, per folio	0	0	6
Every cognizance or bond of any description whatever	0	10	0
Every allowance of writ of error	0	10	0
Bail on cepi corpus, habeas corpus, error or ejectment	0	2	0
Delivering bail piece off the file, or justification of bail	0	2	0

	£	s.	d.
Every committal	0	5	0
Every exhibit signed by judge	0	1	0
Producing judge's notes	0	5	0
Bill of exceptions signed by judge	0	5	0
Order in legacy duty cases	0	5	0
Crown revenue cases, from defendant	0	5	0
Attendance in any court, or otherwise, under subpœna or special order of court, to give evidence, or produce documents ..... per day	1	0	0
Attendance as a commissioner to take affidavit, &c. or at a judge's house, or elsewhere, at request of parties	0	10	0
Appointment of commissioners under glebe exchange	1	0	0
Allowance of bye-laws or table of fees	1	0	0
Report on private bill	5	0	0
Attendance by Counsel, each side	0	5	0

Note.—All plans, sections, &c. accompanying any order or office copy to be paid for by the party, according to the actual cost.

In cases where the party has been allowed to sue in formâ pauperis, the fees are not to be demanded or taken, nor in cases where such fees would be payable by any Revenue or other Government Department.

All other fees than those before mentioned are hereby abolished, and are not to be taken by any person at the Judge's Chambers under any pretence whatever.

Given under our hands at the Treasury Chambers, Whitehall, this twentieth day of November, 1852.

CHANDOS,
THOS. BATESON, } Two of the Commissioners of Her Majesty's Treasury.

We, the undersigned Judges of the Superior Courts of Common Law, do settle, allow, and sanction the before-mentioned Table of Fees prepared by the Commissioners of Her Majesty's Treasury, and we do hereby establish the same, under the provisions of the aforesaid Act.

Dated the twenty-second day of November, 1852.

CAMPBELL, } Lord Chief Justice of the Court of Queen's Bench.

JOHN JERVIS, } Lord Chief Justice of the Court of Common Pleas.

FRED. POLLOCK, } Lord Chief Baron of the Court of Exchequer.

W. H. MAULE,
E. V. WILLIAMS,
T. N. TALFOURD, } Judges of the Court of Common Pleas.

The before-mentioned Tables of Fees having been sanctioned and allowed by the Lord Chief Justices, the Lord Chief Baron,

and other Judges, as required by the said Act, we do hereby order that the said Tables of Fees be inserted and published in the London Gazette.

Treasury Chambers, Whitehall, the twenty-second day of November, 1852.

CHANDOS, } Two of the Commissioners of
THOS. BATESON, } Her Majesty's Treasury.

REGULÆ GENERALES

OF

HILARY TERM, 1853.

Hilary Term, 1853.

Whereas the practice of the Courts of Queen's Bench, Common Pleas and Exchequer, in civil actions, in respect of which the said Courts possess a common jurisdiction, has been to a great extent superseded or altered by the Common Law Procedure Act, 1852, and it is expedient that the written Rules of practice of the said Courts should be consolidated and rendered uniform: It is ordered, that all existing written Rules of Practice in any of the said Courts in regard to such civil actions, save and except as regards any step or proceeding heretofore taken, shall be and the same are hereby annulled, and that the Practice to be observed in the said Courts with respect to the matters hereafter mentioned shall be as follows; that is to say,

WRIT OF SUMMONS.

1. When a writ of summons is indorsed in the special form mentioned in sect. 27 of the Common Law Procedure Act, 1852, the following are the amounts which may be indorsed by the plaintiff's attorney or agent upon the writ for costs; and to include mileage:

In Actions above £20.

£.	s.	d.		£.	s.	d.
In town causes 3	8	0	In country or agency cases (including mileage)	4	0	0

In Actions under £20.

In town causes 2	14	0	In country or agency cases (including mileage)	3	2	0

Where the plaintiff's attorney, at the time of issuing the writ, claims more than the sums fixed as above, the indorsement on the writ of summons in respect of costs shall be as follows: "Such sum as shall be allowed on taxation for costs." And in

case the plaintiff shall be found not entitled to more costs than such fixed sums, or if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation. So if the attorney has indorsed on the writ one of the fixed sums for the costs of judgment, and claims more costs on signing judgment, and on taxation shall be found not entitled to more than such sum, or if more than one-sixth be taken off on taxation, the plaintiff's attorney shall in like manner pay the costs of taxation.

APPEARANCE.

2. If two or more defendants in the same action shall appear by the same attorney and at the same time, the names of all the defendants so appearing shall be inserted in one appearance.

ATTORNEY AND GUARDIAN.

3. An attorney not entering an appearance in pursuance of his undertaking shall be liable to an attachment.

4. No attorney shall be changed without the order of a Judge.

5. A special admission of prochein amy, or guardian, to prosecute or defend for an infant, shall not be deemed an authority to prosecute or defend in any but the particular action or actions specified.

JOINDER OF PARTIES.

6. Whenever a plaintiff shall amend the writ after notice by the defendant, or a plea in abatement of a nonjoinder by virtue of the Common Law Procedure Act, 1852, sect. 36, he shall file a consent in writing of the party or parties whose name or names are to be added, together with an affidavit of the handwriting, and give notice thereof to the defendant, unless the filing of such consent be dispensed with by order of the Court or a Judge.

PLEADINGS.

7. No side bar rule for time to declare shall be granted.

8. The defendant shall not be at liberty to waive his plea, or enter a relictâ verificatione after a demurrer, without leave of the Court or a Judge, unless by consent of the plaintiff or his attorney.

9. In case the time for pleading to any declaration or for answering any pleadings, shall not have expired before the 10th day of August in any year, the party called upon to plead, reply, &c. shall have the same number of days for that purpose after the 24th day of October as if the declaration or preceding pleading had been delivered or filed on the 24th of October.

10. Where a defendant shall plead a plea of judgment recovered, he shall in the margin of such plea state the date of such judgment, and if such judgment shall be in a Court of record, the number of the roll on which such proceedings are entered, if any; and, in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer or person having the custody of the records or proceedings of the Court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea.

PAYMENT OF MONEY INTO COURT.

11. No affidavit shall be necessary to verify the plaintiff's signature to the written authority to his attorney to take money out of Court, unless specially required by the Master.

12. When money is paid into Court in respect of any particular sum or cause of action in the declaration, and the plaintiff accepts the same in satisfaction, the plaintiff, when the costs of the cause are taxed, shall be entitled to the costs of the cause in respect of that part of his claim so satisfied, up to the time the money is so paid in and taken out, whatever may be the result of any issue or issues in respect of other causes of action; and if the defendant succeeds in defeating the residue of the claim, he will be entitled to the costs of the cause in respect of such defence, commencing at "Instructions for Plea," but not before.

13. Where money is paid into Court in several actions which are consolidated, and the plaintiff, without taxing costs, proceeds to trial on one and fails, he shall be entitled to costs on the others up to the time of paying money into Court.

DEMURRER.

14. The party demurring may give a notice to the opposite party to join in demurrer in four days, which notice may be delivered separately or indorsed on the demurrer, otherwise judgment.

15. No motion or rule for a concilium shall be required; but demurrers, as well as all special cases, special verdicts and appeals from county courts, shall be set down for argument in the special paper at the request of either party, four clear days before the day on which the same are to be argued, and notice thereof shall be given forthwith by such party to the opposite party.

16. Four clear days before the day appointed for argument the plaintiff shall deliver copies of the demurrer book, special case, special verdict, or appeal cases, with the points intended

to be insisted on, to the Lord Chief Justice of the Queen's Bench or Common Pleas, or Lord Chief Baron, as the case may be, and the senior puisne judge of the Court in which the action is brought; and the defendant shall deliver copies to the other two judges of the Court next in seniority; and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default; and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Master a sufficient sum to pay for such copies. If the statement of the points have not been exchanged between the parties, each party shall, in addition to the two copies left by him, deliver also his statement of the points to the other two Judges, either by marking the same in the margin of the books delivered, or on separate papers.

17. When there shall be a demurrer to part only of the declaration or other subsequent pleadings, those parts only of the declarations and pleadings to which such demurrer relates shall be copied into the demurrer books; and if any other parts shall be copied, the Master shall not allow the costs thereof on taxation, either as between party and party, or as between attorney and client.

VENUE, CHANGE OF.

18. No venue shall be changed without a special order of the Court or a judge, unless by consent of the parties.

PARTICULARS OF DEMAND OR SET-OFF.

19. With every declaration (unless the writ has been specially indorsed under the provisions contained in the 25th section of the Common Law Procedure Act, 1852), delivered or filed, containing causes of action such as those set forth in Schedule B. of that act, and numbered from 1 to 14 inclusive, or of a like nature, the plaintiff shall deliver or file full particulars of his demand under such claim, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios, he shall deliver or file such a statement of the nature of his claim, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios; and with every plea of set-off containing claims of a similar nature as those in respect of which a plaintiff is required to deliver or file particulars, the defendant shall in like manner deliver particulars of his set-off. And to secure the delivery or filing of particulars in all such cases, it is ordered, that if any such declaration shall be delivered or filed, or any plea of set-off delivered, without such particulars, or such statement as aforesaid, and a judge shall afterwards order a delivery of particulars, the plaintiff or defendant, as the case may be, shall not be allowed any costs in respect of any summons

for the purpose of obtaining such order, or of the particulars he may afterwards deliver; and a copy of the particulars of the demand, and set-off, shall be annexed by the plaintiff's attorney to every record at the time it is entered with the proper officer.

20. A summons for particulars, and order thereon, may be obtained by a defendant before appearance, and may be made, if the judge think fit, without the production of any affidavit.

21. A defendant shall be allowed the same time for pleading after the delivery of particulars under a Judge's order which he had at the return of the summons, unless otherwise provided for in such order.

SECURITY FOR COSTS.

22. An application to compel the plaintiff to give security for costs must, in ordinary cases, be made before issue joined.

DISCONTINUANCE.

23. To entitle a plaintiff to discontinue after plea pleaded, it shall not be necessary to obtain the defendant's consent, but the rule shall contain an undertaking on the part of the plaintiff to pay the costs, and a consent that if they are not paid within four days after taxation defendant shall be at liberty to sign judgment of non pros.

STAYING PROCEEDINGS.

24. In any action against an acceptor of a bill of exchange, or the maker of a promissory note, the defendant shall be at liberty to stay proceedings on payment of the debt and costs in that action only.

COGNOVIT, WARRANT OF ATTORNEY, JUDGE'S ORDER FOR JUDGMENT.

25. No judgment shall be signed upon any cognovit or any warrant of attorney without such cognovit or warrant being delivered to and filed by the Master, who is hereby ordered to file the same in the order in which it is received.

26. Leave to enter up judgment on a warrant of attorney above one and under ten years old, is to be obtained by order of a Judge made ex parte, and if ten years old or more, upon a summons to show cause.

27. Every attorney or other person who shall prepare any warrant of attorney to confess judgment which is to be subject to any defeasance shall cause such defeasance to be written on the same paper or parchment on which the warrant is written, or cause a memorandum in writing to be made on such warrant, containing the substance and effect of such defeasance.

28. The costs of filing a judge's order for judgment against a trader defendant under the Bankrupt Act, shall not be allowed unless specially ordered by the judge.

EVIDENCE; ADMISSION AND INSPECTION OF DOCUMENTS; SUBPŒNA TO PRODUCE RECORDS; DEPOSITIONS ON INTERROGATORIES.

29. The form of notice to admit documents referred to in the Common Law Procedure Act, 1852, section 117, may be as follows:—

In the Q. B. / C. P. / *or* Exchequer. } *A. B.* v. *C. D.*

Take notice, that the { Plaintiff / Defendant } in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the { Defendant, / Plaintiff, } his attorney or agent, at ——, on ——, between the hours of —— ; and the { Defendant / Plaintiff } is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause. Dated, &c.

G. H., Attorney
[*or* "Agent"] for { Plaintiff / Defendant }

To *E. F.*, Attorney
[*or* "Agent"] for { Defendant / Plaintiff. }

[*Here describe the documents, the manner of doing which may be as follows:*—

ORIGINALS.

Description of the Documents.	Date.
Deed of Covenant between *A. B.* and *C. D.* 1st part; and *E. F.* 2nd part	1st January, 1848.
Indenture of Lease from *A. B.* to *C. D.*	1st February, 1848.
Indenture of Release between *A. B.*, *C. D.*, 1st part, &c	2nd February, 1848.
Letter, Defendant to Plaintiff	1st March, 1848.
Policy of Insurance on Goods by ship Isabella on voyage from Oporto to London	3rd December, 1847.
Memorandum of Agreement between *C. D.*, captain of said ship, and *E. F.* ..	1st January, 1848.
Bill of Exchange for 100*l.* at Three months, drawn by *A. B.* on and accepted by *C. D.*, endorsed by *E. F.* and *G. H.*	1st May, 1849.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how and by whom.
Register of baptism of *A. B.* in the parish of *X.*	1st January, 1808.	
Letter—plaintiff to defendant	1st February, 1842	Sent by General Post, 2d Feb. 1848.
Notice to produce papers ...	1st March, 1848.	Served 2 March, 1848, on defendant's attorney, by *E. F.* of ——.
Record of a judgment of the Court of Queen's Bench in an action, *J. S.* v. *J. N.*	Trin. Term, 10 Vict	
Letters-patent of King Charles II. in the Rolls Chapel.....	1st January, 1680.	

30. In all cases of trials, writs of inquiry, or inquisitions of any kind, either party may call on the other party, by notice, to admit documents in the manner provided by and subject to the provisions of the Common Law Procedure Act, 1852; and in case of the refusal or neglect to admit after such notice given, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or inquisition the judge or presiding officer shall certify that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is, in the opinion of the Master, a saving of expense.

31. An order upon the lord of a manor, to allow the usual limited inspection of the Court rolls, on the application of a copyhold tenant, may be absolute in the first instance, upon an affidavit that the copyhold tenant has applied for and been refused inspection.

32. No subpœna for the production of an original record shall be issued unless a rule of Court or the order of a Judge shall be produced to the officer issuing the same, and filed with him, and unless the writ shall be made conformable to the description of the document mentioned in such rule or order.

33. All depositions of witnesses taken under the order of a Judge, rule of Court, or writ of commission, shall be returned to

and filed in the office of the Masters of the Court in which the action or proceediug is pending.

TRIAL, NOTICE OF TRIAL AND INQUIRY.

34. Notice of trial or inquiry, and of continuance of trial or inquiry, shall be given in town; but countermand of notice of trial or inquiry may be given either in town or country, unless otherwise ordered by the Court or a Judge.

35. The expression "Short notice of trial," or "Short notice of inquiry," shall in all cases be taken to mean four days.

36. Notice of trial or inquiry may be continued to any sitting in or after term, on giving a notice of continuance four days before the time mentioned in the notice of trial or inquiry, unless short notice of trial or inquiry has been given, in which cases two days previous notice shall be sufficient, unless otherwise ordered by the Court, or a Judge, or by consent.

37. Countermand of notice of inquiry shall be given four days before the day of inquiry mentioned in the notice, unless short notice of inquiry has been given, and then two days before such day, unless otherwise ordered by the Court or a Judge, or by consent.

38. On a replication or other pleading denying the existence of a record pleaded by the defendant a rule for the defendant to produce the record shall not be necessary or used, and instead thereof a four days notice shall be substituted, requiring the defendant to produce the record, otherwise judgment.

39. The costs of the day for not proceeding to trial or to execute a writ of inquiry may be obtained by a side-bar rule, on the usual affidavit.

40. In all cases where the plaintiff's pleading is in denial of the pleading of the defendant, without joining issue, the plaintiff's attorney may give notice of trial at the time of delivering his replication or other subsequent pleading; and in case issue shall afterwards be joined, such notice shall be available; but if issue be not joined on such replication, or other subsequent pleading, and the plaintiff shall sign judgment for want thereof, and forthwith give notice of executing a writ of inquiry, such notice shall operate from the time that notice of trial was given as aforesaid; and in all cases where the defendant demurs to the plaintiff's declaration, replication, or other subsequent pleading, the defendant's attorney, or the defendant, if he plead in person, shall be obliged to accept notice of executing a writ of inquiry on the back of the joinder in demurrer: and in case the defendant pleads a plea in bar or rejoinder, &c. to which the plaintiff demurs, the defendant's attorney, or the defendant, if he

plead in person, shall be obliged to accept notice of executing a writ of inquiry on the back of such demurrer.

41. Notice of a trial at bar shall be given to the Masters of the Court before giving notice of trial to the party.

42. No trial by proviso shall be allowed in the same Term in which the default of the plaintiff has been made, and no rule for a trial by proviso shall be necessary.

43. All causes to be entered for trial in London and Middlesex shall be entered as follows; that is to say, if notice of trial shall be given for any sitting within term, two days before the day of sitting; and if for a sitting after term, before eight o'clock, P.M. of the day before the first day of such sitting, and if the same shall not be so entered for such sittings respectively a ne recipiatur may be entered.

JURY AND VIEW.

44. No rule for a special jury shall be granted on behalf of any defendant (or plaintiff, in replevin), except on an affidavit, either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and in the latter case, no such rule is to be granted unless such application is made for it more than six days before that day; provided that a judge may, on summons, order a rule for a special jury to be drawn up at any time.

45. No cause shall be tried by a special jury in Middlesex or London, unless the rule for such special jury be served, and the cause marked in the Associate's book as a special jury cause, on or before the day preceding the day appointed in Middlesex and London respectively for the trial of special juries.

46. There shall be no rule for the sheriff to return a good jury upon a writ of inquiry, but an order shall be made by a judge, upon summons for that purpose.

47. Sheriffs, other than the sheriffs of London and Middlesex, shall, seven days before the commission day, make and keep at their offices, for inspection, a printed copy of the panel of the special jurymen to try the special jury causes at the assizes, as directed by the Common Law Procedure Act, 1852; but such special jury need not be summoned, except notice be given as provided for by the 112th section of the said Act.

48. The rule for a view may in all cases be drawn up by the officer of the Court, on the application of the party, without a motion for that purpose.

49. Upon any application for a view, there shall be an affidavit, stating the place at which the view is to be made, and the distance thereof from the office of the under sheriff, and the sum to be deposited in the hand of the under sheriff shall be £10 in case of a common jury, and £16 in case of a special jury, if such distance do not exceed five miles; and £15 in

case of a common jury, and £21 in case of a special jury, if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such attorney to the under sheriff. And the under sheriff shall pay and account for the money so deposited according to the scale following; (that is to say,)

	£	s.	d.
For travelling expenses to the under sheriff, showers and jurymen, expenses actually paid, *if reasonable.*			
Fee to the under sheriff, when the distance does not exceed five miles from his office	1	1	0
Where such distance exceeds five miles	2	2	0
And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of	1	1	0
Fee to each of the showers the same as the under sheriff, calculating the distance from their respective places of abode.			
Fee to each common juryman, per diem	0	5	0
For each special juryman, per diem	1	1	0
Allowance for refreshment to the under sheriff, showers, and jurymen, whether common or special, each, per diem	0	5	0
To the bailiff for summoning each juryman whose residence is not more than five miles distant from the office of the under sheriff	0	2	6
And to each whose residence does exceed five miles of such distance	0	5	0

NEW TRIALS—MOTIONS IN ARREST OF JUDGMENT, AND JUDGMENT NON OBSTANTE VEREDICTO.

50. No motion for a new trial, or to enter verdict or nonsuit, motion in arrest of judgment, or for judgment non obstante veredicto, shall be allowed after the expiration of four days from the day of trial, nor in any case after the expiration of the Term, if the cause be tried in Term, or after the expiration of the first four days of the ensuing Term when the cause is tried out of Term, unless entered in a list of postponed motions by leave of the Court.

51. No suitor who appears in person shall be at liberty to set down any motion in such list of postponed motions, without the express leave of the Court.

52. No affidavit shall be used in support of a motion for a new trial in any case, unless such affidavit shall have been made within the time limited for the making such motion, without the special permission of the Court for that purpose.

53. If such motion as above mentioned be entered in such

list of proposed motions, or if such motion be postponed by leave of the Court in the case of a cause tried in Term, the attorney who has instructed counsel to make the motion shall give notice of it to the attorney of the opposite party, otherwise judgment signed on behalf of the opposite party shall be deemed regular, and every suitor who appears in person shall give a similar notice.

54. If a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he succeed on the second.

JUDGMENT.

55. No rule for judgment shall be necessary; and after the return of a writ of inquiry judgment may be signed at the expiration of four days from such return.

56. All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day; but it shall be competent for the Court or a Judge to order a judgment to be entered nunc pro tunc.

57. When a plaintiff or defendant has obtained a verdict in Term, or in case a plaintiff has been nonsuited at the trial in or out of Term, judgment may be signed and execution issued thereon in fourteen days, unless the Judge who tries the cause, or some other Judge, or the Court, shall order execution to issue at an earlier or later period, with or without terms.

58. Where issue shall be joined in any cause which is ordered to be tried before the Sheriff or a Judge of an Inferior Court of Record, the defendant may at the time when, according to the 101st section of the Common Law Procedure Act, 1852, a defendant might give notice to the plaintiff to bring on an issue to be tried, give twenty days notice to the plaintiff to bring on the issue to be tried before such Sheriff or Judge at the Court to be holden next after the expiration of such twenty days; and if the plaintiff neglects to give notice of trial before such Sheriff or Judge, or to proceed to trial in pursuance thereof, the defendant may proceed as provided for by the said 101st section.

COSTS; SETTING OFF DAMAGES OR COSTS.

59. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the attorney of the party whose costs are to be taxed to the other party, or his attorney, in all cases where a notice to tax is necessary.

60. One appointment only shall be deemed necessary for proceeding in the taxation of costs or of an attorney's bill.

61. Notice of taxing costs shall not be necessary in any case

where the defendant has not appeared in person, or by his attorney or guardian.

62. When issues in law and fact are raised, the costs of the several issues both in law and fact will follow the finding or judgment, and if the party entitled to the general costs of the cause obtain a verdict on any material issue, he will also be entitled to the general costs of the trial; but if no material issue in fact be found for the party otherwise entitled to the general costs of the cause, the costs of the trial shall be allowed to the opposite party.

63. No set-off of damages or costs between parties shall be allowed to the prejudice of the attorney's lien for costs in the particular suit against which the set-off is sought: provided nevertheless, that interlocutory costs in the same suit, awarded to the adverse party, may be deducted.

ERROR.

64. Within eight days after the filing with the Master of the memorandum of error in fact, required by the Common Law Procedure Act, 1852, the plaintiff in error shall assign error; and in default, the defendant in error, his executors or administrators, shall be entitled to sign judgment of non pros.

65. No rule to plead to assignment of error in fact, or any other pleadings in error, shall be necessary, but either party may give to the opposite party a notice to answer such pleading within four days, otherwise judgment; which notice may be delivered separately, or indorsed on the pleading.

66. Notice of trial, and all other proceedings thereon, shall be the same as in issues joined in an ordinary action.

67. After the suggestion of error in law, alleged and denied as prescribed by the Common Law Procedure Act, 1852, is entered, either party may set down the case for argument, and forthwith give notice in writing to the opposite party, and proceed to the argument thereof as on a demurrer, without any rule or motion for a concilium.

68. Four clear days before the day appointed for argument, the plaintiff in error shall deliver copies of the judgment roll of the Court below to the Judges of the Queen's Bench on error from the Common Pleas or Exchequer, and to the Judges of the Common Pleas on error from the Queen's Bench; and the defendant in error shall deliver copies thereof to the other Judges of the Court of Exchequer Chamber before whom the case is to be heard; and in default by either party, the other party may on the following day deliver such books as ought to have been delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Master a sufficient sum to pay for such copies.

69. The costs of proceedings in error shall be taxed and allowed as costs in the cause.

EXECUTION.

70. It shall not be necessary, before issuing execution upon any judgment whatever, to enter the proceedings upon any roll.

71. No writ of execution shall be issued till the judgment paper, postea, or inquisition, as the case may be, has been seen by the proper officer, nor shall any writ of execution be issued without a præcipe being filed with the proper officer.

72. Every writ of execution shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chief Justice or of the Lord Chief Baron of the Court from which the same shall issue, or in case of a vacancy of such office then in the name of the senior Puisne Judge of the said Court, and may be made returnable on a day certain in term.

73. Every writ of execution shall be indorsed with the name and place of abode or office of business of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the Court in which the same is sued out, then also with the name and place of abode or office of business of the attorney of such Court in whose name such writ shall be taken out; and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ; and in case no attorney shall be employed to issue the writ, then it shall be endorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town or parish, and also the name of the hamlet, street and number of the house of such plaintiff's or defendant's residence, if any such there be.

74. Writs of capias ad satisfaciendum for the purposes of outlawry on final process, or to fix bail, must be made returnable on a certain day in term, and may be so returnable on any day in term, and it shall be sufficient for either purpose that there be eight days between the teste and return.

75. A writ of capias ad satisfaciendum to fix bail shall have eight days between the teste and return, and must, in London and Middlesex, be entered four clear days in the public book at the sheriff's office.

76. Every writ of execution shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the

amount, and also to levy interest thereon, if sought to be recovered, at the rate of four pounds per centum per annum from the time when the judgment was entered up, or if it was entered up before the 1st of October, 1838, then from that day; provided that in cases where there is an agreement between the parties that more than four per cent. interest shall be secured by the judgment, then the endorsement may be accordingly to levy the amount of interest so agreed.

77. In cases of an assessment of further damages, pursuant to the statute of 8 & 9 William III., it shall be stated in the body of the writ of execution that the sheriff, or other officer or person to whom the writ is directed, is to levy interest on the damages assessed, and costs taxed in that behalf, at the rate of four pounds per centum per annum from the day on which execution was awarded, unless execution was awarded before the 1st of October, 1838, and in that case from that day.

REVIVOR AND SCIRE FACIAS.

78. A plaintiff shall not be allowed a rule to quash his own writ of scire facias or revivor, after a defendant has appeared, except on payment of costs.

AUDITA QUERELA.

79. No writ of auditâ querelâ shall be allowed unless by rule of Court or order of a Judge.

ENTRY OF SATISFACTION ON ROLL.

80. In order to acknowledge satisfaction of a judgment it shall be requisite only to produce a satisfaction piece, in form as hereinafter mentioned; and such satisfaction piece shall be signed by the party or parties acknowledging the same, or their personal representatives; and such signature or signatures shall be witnessed by a practising attorney of one of the Courts at Westminster expressly named by him or them, and attending at his or their request, to inform him or them of the nature and effect of such satisfaction piece before the same is signed, and which attorney shall declare himself in the attestation thereto, to be the attorney for the person or persons so signing the same, and state he is witness as such attorney; [provided that a Judge at chambers may make an order dispensing with such signature under special circumstances, if he think fit,] and in cases where the satisfaction piece is signed by the personal representative of a deceased, his representative character shall be proved in such manner as the Master may direct.

FORM OF SATISFACTION PIECE.

In the ——.

Monday, the —— day of ——, A.D. 185—.

—— to wit.—Satisfaction is acknowledged between —— plaintiff, and —— defendant, in an action —— for —— and ——: And —— do hereby expressly nominate and appoint ——, attorney at law, to witness and attest —— execution of this acknowledgment of satisfaction.

Judgment entered on the —— day of —— in the year of our Lord 185—. Roll No. ——.

Signed by the said —— in the presence of me —— of ——, one of the attornies of the Court of —— at Westminster. And I hereby declare myself to be attorney for and on behalf of the said —— expressly named by h—— and attending at h—— request to inform h—— of the nature and effect of this acknowledgment of satisfaction (which I accordingly did before the same was signed by h——). And I also declare that I subscribe my name hereto as such attorney.

(Signature)

the above-named plaintiff.

(Date.)

BAILABLE PROCEEDINGS, BAIL, AND BAIL IN ERROR.

81. The sheriff, or other officer or person to whom any writ of capias shall be directed, or who shall have the execution and return thereof, shall, within six days at least after the execution thereof, indorse on such writ the true day of the execution thereof.

82. Where the defendant is described, in the writ of capias or affidavit to hold to bail, by initials, or by a wrong name, or without a Christian name, the defendant shall not be discharged out of custody, or the bail-bond delivered up to be cancelled, on motion for that purpose, if it shall appear to the Court that due diligence has been used to obtain knowledge of the proper name.

83. An action may be brought upon a bail-bond by the sheriff himself in any Court.

84. In all cases where the bail-bond shall be directed to stand as a security, the plaintiff shall be at liberty to sign judgment upon it.

85. Proceedings on the bail-bond may be stayed on payment of costs in one action, unless sufficient reason be shown for proceeding in more.

86. When bail to the sheriff become bail to the action, the plaintiff may except to them, though he has taken an assignment of the bail-bond.

87. A plaintiff shall not be at liberty to proceed on the bail-bond pending a rule to bring in the body of the defendant.

88. No rule shall be drawn up for setting aside an attachment, regularly obtained against a sheriff for not bringing in the body, or for staying proceedings regularly commenced on the assignment of any bail-bond, unless the application for such rule shall, if made on the part of the original defendant, be grounded on an affidavit of merits, or if made on the part of the sheriff, or bail, or any officer of the sheriff, be grounded on an affidavit, showing that such application is really and truly made on the part of the sheriff, or bail, or officer of the sheriff, as the case may be, at his or their own expense, and for his or their indemnity only, and without collusion with the original defendant.

89. Whenever a plaintiff shall rule the sheriff on a return of cepi corpus to bring in the body, the defendant shall be at liberty to put in and perfect bail at any time before the expiration of such rule; and a plaintiff, having so ruled the sheriff, shall not proceed on any assignment of the bail-bond, until the time has expired to bring in the body as aforesaid.

90. In case a rule for returning a writ of capias shall expire in vacation, and the sheriff or other officer having the return of such writ shall return cepi corpus thereon, a rule may thereupon issue, requiring the sheriff or other officer, within the like number of days after the service of such rule as by the practice of the Court is prescribed with respect to rules to bring in the body issued in term, to bring the defendant into Court, by forthwith putting in and perfecting bail above to the action; and if the sheriff or other officer shall not duly obey such rule, an attachment shall issue in the following term for disobedience of such rule, whether the bail shall or shall not have been put in and perfected in the meantime.

91. Notice of more bail than two shall be deemed irregular, unless by order of the Court or a Judge.

92. The bail, of whom notice shall be given, shall not be changed without leave of the Court or a Judge.

93. No person or persons shall be permitted to justify himself or themselves as good and sufficient bail for any defendant or defendants if such person or persons shall have been indemnified for so doing by the attorney or attorneys concerned for any such defendant or defendants.

94. If any person put in as bail to the action, except for the purpose of rendering only, be a practising attorney, or clerk to a practising attorney, or a sheriff's officer, bailiff, or person concerned in the execution of process, the plaintiff may treat the bail as a nullity, and sue upon the bail-bond as soon as the time for putting in bail has expired, unless good bail be duly put in in the meantime.

95. In the case of country bail, the bail-piece shall be transmitted and filed within eight days.

96. A defendant may justify bail at the same time at which they are put in, upon giving four days' notice for that purpose, before eleven o'clock in the morning, and exclusive of Sunday. If the plaintiff is desirous of time to inquire after the bail, and shall give one day's notice thereof as aforesaid to the defendant, his attorney or agent, as the case may be, before the time appointed for justification, stating therein what further time is required, such time not to exceed three days, then (unless the Court or a Judge shall otherwise order) the time for putting in and justifying bail shall be postponed accordingly, and all proceedings shall be stayed in the meantime.

97. Every notice of bail shall, in addition to the descriptions of the bail, mention the street or place, and number (if any), where each of the bail resides, and all the steeets or places, and numbers (if any), in which each of them has been resident at any time within the last six months, and whether he is a housekeeper or freeeholder.

98. If the notice of bail shall be accompanied by an affidavit of each of the bail according to the following form, and if the plaintiff afterwards except to such bail, he shall, if such bail are allowed, pay the costs of justification; and if such bail are rejected, the defendant shall pay the costs of opposition, unless the Court or a Judge thereof shall otherwise order.

Form of Affidavit of Justification of Bail.

In the Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*].

Between *A. B.* plaintiff, and *C. D.* defendant.

B. B., one of the bail for the above-named defendant, maketh oath and saith, that he is a housekeeper [*or* freeholder, *as the case may be*,] residing at —— [*describing particularly the street or place, and number, if any*]; that he is worth property to the amount of £—— [*the amount required by the practice of the Courts*] over and above what will pay all his just debts [*if bail in any other action add* "and every other sum for which he is now bail"]; that he is not bail for any defendant except in this action [*or, if bail in any other action or actions, add* "except for *C. D.* at the suit of *E. F.* in the Court of —— in the sum of £——; for *G. H.* at the suit of *I. K.* in the Court of —— in the sum of £——" *specifying the several actions, with the Courts in which they are brought, and the sums in which the deponent is bail*]; that the deponent's property, to the amount of the said sum of £—— [*if bail in any other action or actions, here add* "and of all other sums for which he is now bail as aforesaid"], consists of [*here specify the nature and value of the property in respect of which the bail proposes to justify as follows:* "stock in trade, in his business of ——, carried on by him at ——, of the value of £——; of good book debts owing to him to the amount of £——; of furniture in his house at —— of the value of £——; of a freehold *or* leasehold farm of the

value of £——, situate at ——, occupied by ——, *or* of a dwelling-house of the value of £—— situate at ——, occupied by —— ;" *or of other property, particularizing each description of property with the value thereof*]; and that the deponent hath for the last six months resided at —— [*describing the place or places of such residence*].

Sworn [*&c., as usual*].

99. If the plaintiff shall not give one day's notice of exception to the bail by whom such affidavit shall have been made, the recognizance of such bail may be taken out of Court without other justification than such affidavit.

100. Where notice of bail shall not be accompanied by such affidavit, and in bail in error, the plaintiff may except thereto within twenty days next after the putting in of such bail and notice thereof given in writing to the plaintiff or his attorney, or where special bail is put in before any Commissioner, the plaintiff may except thereto within twenty days next after the bail-piece is transmitted and notice thereof given as aforesaid; and no exception to bail shall be admitted after the time hereinbefore limited.

101. Affidavits of justification shall be deemed insufficient unless they state that each person justifying is worth double the amount sworn to over and above what will pay his just debts, and over and above every other sum for which he is then bail, except when the sum sworn to exceeds 1,000*l.*, when it shall be sufficient for the bail to justify in 1,000*l.* beyond the sum sworn to.

102. It shall be sufficient, in all cases, if notice of justification of bail be given two days before the time of justification.

103. In all cases bail either to the action or in error shall be justified, when required, within four days after exception, before a Judge at chambers, both in term and vacation.

104. Bail, though rejected, shall be allowed to render the principal without entering into a fresh recognizance.

105. Bail shall be at liberty to render the principal at any time during the last day for rendering, so as they make such render before the prison doors are closed for the night.

106. On application by a defendant or his bail, or either of them, for an order to render a defendant to a county gaol, it shall be specified on whose behalf such application shall be made, the state of the proceedings in the cause, for what amount the defendant was held to bail, and by the sheriff of what county he was arrested, which facts shall be stated in the order; and that on such order being lodged with the gaoler of the county gaol in which such defendant was so arrested, the defendant may be rendered to his custody in discharge of the bail; and that on such lodgment and render a notice thereof, and of the defendant's being actually in custody thereon, in writing,

signed by the defendant or his bail, or either of them, or the attorney or agent of any or either of them, shall be delivered to the plaintiff's attorney or agent, and thereupon the bail for the said defendant shall be wholly exonerated, without entering any exoneretur.

107. If a defendant shall be in custody of the gaoler of any county gaol by virtue of any process issued out of any of the said Courts, he may be rendered in discharge of his bail in any action depending in the said Court in like manner as is last hereinbefore provided, and thereupon the bail shall be wholly exonerated without entering any exoneretur.

108. Where the plaintiff proceeds by action on the recognizance of bail, the bail shall be at liberty to render their principal at any time within the space of eight days next after the service of the process upon them, but not at any later period; and notice thereof given, the proceedings shall be stayed upon payment of the costs of the writ and service thereof only.

109. Bail shall only be liable to the sum sworn to by the affidavit of debt and the costs of suit, not exceeding in the whole the amount of their recognizance.

110. To entitle bail to a stay of proceedings pending a writ of error, the application must be made before the time to surrender is out.

111. Whenever two or more notices of justification of bail shall have been given before the notice on which bail shall appear to justify, no bail shall be permitted to justify without first paying (or securing to the satisfaction of the plaintiff, his attorney or agent), the reasonable costs incurred by such prior notices, although the names of the persons intended to justify, or any of them, may not have been changed, and whether the bail mentioned in any such prior notice shall not have appeared, or shall have been rejected.

EJECTMENT.

112. No judgment in ejectment for want of appearance or defence, whether limited or otherwise, shall be signed without first filing an affidavit of the service of the writ, according to the Common Law Procedure Act, 1852, and a copy thereof or, where personal service has not been effected, without first obtaining a judge's order or a rule of court authorizing the signing such judgment; which said rule or order, or a duplicate thereof, shall be filed together with a copy of the writ.

113. Where a person not named in the writ in ejectment has obtained leave of the Court or a Judge to appear and defend, he shall enter an appearance according to the Common Law Procedure Act, 1852, entitled in the action against the party or parties named in the writ as defendant or defendants, and

shall forthwith give notice of such appearance to the plaintiff's attorney, or to the plaintiff, if he sues in person.

114. If the plaintiff in ejectment appears at the trial, and the defendant does not appear, the defendant shall be taken to have admitted the plaintiff's title, and the verdict shall be entered for the plaintiff, without producing any evidence, and the plaintiff shall have judgment for his costs of suit as in other cases.

CAUSES REMOVED FROM INFERIOR COURTS.

115. Rules to appear in causes removed from inferior Courts shall in all cases be a four-day rule, both in term and vacation.

116. In cases of removal of causes from inferior Courts by habeas corpus, where bail is required to be put in on behalf of the defendant, the same practice shall be used, as near as may be, as in putting in bail to an ordinary action, and in the event of no bail being put in within eight days after the habeas corpus allowed a procedendo may issue.

117. If a cause be removed from an inferior Court having jurisdiction of the cause, the costs in the Court below shall be costs in the cause.

PENAL ACTIONS, COMPOUNDING OF.

118. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the crown, unless notice shall have been given to the proper officer; but in other cases it may.

119. The rule for compounding any qui tam action shall express therein that the defendant thereby undertakes to pay the sum for which the Court has given him leave to compound such action.

120. When leave is given by the Court of Queen's Bench to compound a penal action, the Queen's half of the composition shall be paid into the hands of the Master of the Crown Office for the use of her Majesty.

PAUPERS, ACTIONS BY.

121 No person shall be admitted to sue in formâ pauperis, unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party or his attorney that the same case contains a full and true statement of all the material facts, to the best of his knowledge and belief, shall be produced before the Court or Judge to whom application may be made; and no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the Masters, or Associates, or at the Judge's chambers, or elsewhere, by reason of a verdict being found for such pauper exceeding five pounds.

122. Where a pauper omits to proceed to trial, pursuant to notice, he may be called upon by a rule to show cause why he

should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs shall be paid.

PRISONERS, AND PROCEEDINGS AGAINST.

123. Every rule or order of a Judge, directing the discharge of a defendant out of custody upon special bail being put in and perfected, shall also direct a supersedeas to issue forthwith, where defendant is in a county gaol.

124. The plaintiff shall proceed to trial, or final judgment, against a prisoner in the term next after issue is joined, or at the sittings or assizes next after such term, unless the Court or a Judge shall otherwise order, and shall cause the defendant to be charged in execution within the term next after such trial or judgment.

125. The keeper of the Queen's Prison shall present to the Judges of the Courts in their respective chambers at Westminster, within the first four days of every term, a list of all such prisoners as are supersedeable, showing as to what actions and on what account they are so, and as to what actions (if any) they still remain not supersedeable.

126. If, by reason of any writ of error, special order of the Court, agreement of parties, or other special matter, any person detained in the actual custody of the keeper of the Queen's Prison be not entitled to a supersedeas or discharge for want of proceeding to trial or judgment, or charging in execution, within the times prescribed, then and in every such case the plaintiff or plaintiffs at whose suit such prisoner shall be so detained in custody shall with all convenient speed give notice in writing of such writ of error, special order, agreement, or other special matter, to the keeper, upon pain of losing the right to detain such prisoner in custody by reason of such special matter; and the keeper shall forthwith, after the receipt of such notice, cause the matter thereof to be entered in the books of the prison, and shall also present to the Judges of the respective Courts, from time to time, a list of the prisoners to whom such special matter shall relate, showing such special matter, together with the list of the prisoners supersedeable.

127. All prisoners who have been or shall be in the custody of the keeper for the space of one calendar month after they are supersedeable, although not superseded, shall be forthwith discharged out of the Queen's Prison as to all such actions in which they have been or shall be supersedeable.

128. After notice given to any plaintiff by a prisoner of his intention to apply for his discharge under any Act for the Relief of Insolvent Debtors, no such prisoner shall be superseded or discharged out of custody at the suit of such plaintiff, by reason of such plaintiff's forbearing to proceed against him ac-

cording to the rules and practice of the Courts from the time of such notice given, until some rule or order shall be made in the cause in that behalf.

129. A rule or order for the discharge of a prisoner who has been detained in execution a year for a sum under twenty pounds may be made absolute in the first instance, on an affidavit of notice given ten days before the intended application, which notice may be given before the year expires.

SHERIFFS—RULES TO RETURN WRITS OR BRING IN THE BODY.

130. All rules upon the sheriffs of London and Middlesex to return writs or to bring in the bodies of defendants shall be four-day rules, and upon other sheriffs eight-day rules.

131. When the rule to return a writ expires in vacation, the sheriff shall file the writ at the expiration of the rule, or as soon after as the office shall be open; and the officer with whom it is filed shall indorse the day and hour when it was filed.

132. No Judge's order shall issue for the return of any writ, or to bring in the body of a defendant, but a side bar rule shall issue for that purpose in vacation as in term, which shall be of the same force and effect as side bar rules made for that purpose in term.

133. In case a rule shall issue in vacation for the return of any writ of capias, ca. sa., fi. fa., elegit, habere facias possessionem, venditioni exponas, or other writ of execution, and such rule shall have been duly served, but obedience shall not have been paid thereto, an attachment shall issue for disobedience of such rule, whether the thing required by such rule shall or shall not have been done in the meantime.

134. Where any sheriff, before his going out of office, shall arrest any defendant and take a bail bond and make return of cepi corpus, he shall and may within the time allowed by law be called upon to bring in the body by a rule for that purpose, notwithstanding he may be out of office before such rule shall be granted.

IRREGULARITY.

135. No application to set aside process or proceedings for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity.

136. Where a summons is obtained to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated therein.

137. In all cases where a rule is obtained to show cause why proceedings should not be set aside for irregularity with costs, and such rule is afterwards discharged generally without

any special direction upon the matter of costs, it is to be understood as discharged with costs.

AFFIDAVITS.

138. The addition and true place of abode of every person making an affidavit shall be inserted therein.

139. In every affidavit made by two or more deponents, the names of the several persons making such affidavit shall be written in the jurat.

140. No affidavit shall be read or made use of in any matter depending in Court in the jurat of which there shall be any interlineation or erasure.

141. Where any affidavit is sworn before any Judge or any Commissioner by any person who from his or her signature appears to be illiterate, the Judge's Clerk or Commissioner taking such affidavit shall certify or state in the jurat that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand the same, and also that the said party wrote his or her mark or signature in the presence of the Judge's Clerk or Commissioner taking the said affidavit.

142. No affidavit of the service of process shall be deemed sufficient if sworn before the plaintiff's own attorney or his clerk.

143. Where an agent in town, or an attorney in the country, is the attorney on the record, an affidavit sworn before the attorney in the country shall not be received; and an affidavit sworn before an attorney's clerk shall not be received in cases where it would not be receivable if sworn before the attorney himself; but this rule shall not extend to affidavits to hold to bail.

144. An affidavit sworn before a Judge of any of the Courts shall be received in the Court to which such Judge belongs though not entitled of that Court; but not in any other Court unless entitled of the Court in which it is to be used.

145. Where a special time is limited for filing affidavits no affidavit filed after that time shall be made use of in Court or before the Master, unless by leave of a Court or a Judge.

146. No rule which the Court has granted upon the foundation of any affidavit shall be of any force unless such affidavit shall have been actually made before such rule was moved for, and produced in Court at the time of making the motion.

147. All affidavits used before a Judge out of Court shall be filed with the Masters of the said Court, and be alphabetically indexed; and such affidavits shall be delivered to the Masters of the respective Courts, in order to be filed, ten days next after that on which the matter is disposed of.

148. No commission for taking affidavits shall be issued to any person practising as a conveyancer, unless such person be also an attorney or solicitor of one of the Courts at Westminster: and no such commission shall issue without an affidavit made by the person intended to be named therein, that he is not and does not intend to become a practising conveyancer, or that he is an attorney or solicitor duly enrolled in one of the said Courts, and hath taken out his certificate for the current year.

RULES, SUMMONSES AND ORDERS.

149. Every rule of Court shall be dated the day of the week, month and year on which the same is drawn up, without reference to any other time or date.

150. Side bar rules may be obtained on the last as well as on other days in term.

151. A rule may be enlarged, if the Court think fit, without notice.

152. All enlarged rules shall be drawn up for the first day in the ensuing term, unless otherwise ordered by the Court.

153. It shall not be necessary to issue more than one summons for attendance before a judge upon the same matter, and the party taking out such summons shall be entitled to an order on the return thereof, unless cause is shown to the contrary.

154. An attendance on a summons, or on an appointment before a master, for half an hour next immediately following the return thereof, shall be deemed a sufficient attendance.

155. All written consents upon which orders for signing judgments are obtained shall be preserved in the chambers of the judges of the respective Courts.

156. In actions where the defendant has appeared by attorney no such order shall be made unless the consent of the defendant be given by his attorney or agent.

157. Where the defendant has not appeared or has appeared in person, no such order shall be made unless the defendant attends the judge, and gives his consent in person, or unless his written consent be attested by an attorney acting on his behalf; except in a case where the defendant is a barrister, conveyancer, special pleader or attorney.

158. Where a judge's order is made during vacation, it shall not be made a rule of Court before the next term.

159. Where a judge's order or order of nisi prisi is made a rule of Court, it shall be a part of the rule that the costs of making the order a rule of Court shall be paid by the party against whom the order is made, provided an affidavit be made and filed that the order has been served on the party, his attorney or agent, and disobeyed.

160. Rules to show cause shall be no stay of proceedings unless two days' notice of the motion shall have been served on the opposite party, except in the cases of rules for new trials, or to enter verdict or nonsuit, motion in arrest of judgment, or for judgment non obstante veredicto to set aside award or annuity deed, or to enter a suggestion, or by the special direction of the Court.

NOTICES, SERVICE OF,—AND OF RULES, PLEADINGS, &C.

161. All notices required by these rules, or by the practice of the Court, shall be in writing.

162. Where the residence of a defendant is unknown, rules, notices and other proceedings may be stuck up in the office, but not without previous leave of the Court or a Judge.

163. It shall not be necessary to the regular service of a rule or order, that the original rule or order should be shown, unless sight thereof be demanded, except in cases of attachment.

164. Service of pleadings, notices, summonses, orders, rules and other proceedings shall be made before seven o'clock, P. M. If made after that hour, the service shall be deemed as made on the following day.

165. The Masters of the several Courts shall cause to be kept an alphabetical book at their offices, to be there inspected by any attorney or his clerk, without fee or reward:—and every attorney practising in the said Courts, and residing within ten miles of the General Post Office, shall enter in such book (in alphabetical order) his name and place of business, or some other proper place within three miles of the said post office, where he may be served with pleadings, notices, summonses, orders, rules and other proceedings; and as often as any such attorney shall change his place of business, or the place where he may be so served as aforesaid, he shall make the like entry thereof in the said book; and all pleadings, notices, summonses, orders, rules and other proceedings which do not require a personal service shall be deemed sufficiently served on such attorney if a copy thereof shall be left at the place lastly entered in such book with any person resident at or belonging to such place; and if any such attorney shall neglect to make such entry, the fixing up of any notice or the copy of any pleadings, notice, summons, order, rule or other proceeding, for such attorney, in the Masters' offices, shall be deemed a sufficient notice.

166. In all cases where a party sues or defends in person, he shall, upon issuing any writ of summons or other proceeding, or entering an appearance, enter in a book to be kept for that purpose at the Master's office an address within three

miles from the General Post Office, at which all pleadings, notices, summonses, orders, rules or other proceedings not requiring personal service shall be left; and if such address shall not be entered in the said book, or if such address shall be more than three miles from the General Post Office, then the opposite party shall be at liberty to proceed by sticking up all pleadings, notices, summonses, orders, rules or other proceedings in the Master's office, without the necessity of any further service.

167. In all cases where a plaintiff shall have sued out a writ in person, or a defendant shall have appeared in person, and either party shall by an attorney of the Court have given notice in writing to the opposite party, or the attorney or agent of such party, of such attorney being authorized to act as attorney for the party on whose behalf such notice is given, all pleadings, notices, summonses, orders, rules and other proceedings, which, according to the practice of the Courts, are to be delivered to or served upon the party on whose behalf such notice is given, shall thereafter be delivered to or served upon such attorney.

ATTACHMENT.

168. Rules for attachments shall be absolute in the first instance in the two following cases only; viz, first, for nonpayment of costs on a Master's allocatur: secondly, against a sheriff for not obeying a rule to return a writ or to bring in the body.

AWARDS AND ANNUITIES.

169. Where a rule to show cause is obtained to set aside an award or annuity, the several objections thereto intended to be insisted upon at the time of moving to make such rule absolute shall be stated in the rule to show cause.

170. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

MISCELLANEOUS.

171. On a reference to the Master to ascertain the amount for which final judgment is to be signed, the Master's certificate shall be filed in the office when judgment is signed.

172. On every appointment made by the Master, the party on whom the same shall be served shall attend such appointment without waiting for a second, or, in default thereof, the Master may proceed ex parte on the first appointment.

173. The Masters' offices in the several Courts shall be open in term time, from eleven o'clock in the forenoon till five o'clock in the afternoon, and not in the evening; and in the vacation, from eleven o'clock in the forenoon till three o'clock in the afternoon, except between the 10th day of August and the 24th day

of October, when they are to be open from eleven in the morning till two in the afternoon, and except on Good Friday, Easter Eve, Monday and Tuesday in Easter week, Christmas Day, and the three following days. and such of the four following days as may not fall in the time of term, but not otherwise, namely, the Queen's Birthday, the Queen's Accession, Whit Monday and Whit Tuesday, when the offices shall be closed.

174. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the Courts, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

175. The days between Thursday next before and the Wednesday next after Easter Day, and Christmas Day and the three following days, shall not be reckoned or included in any rules, notices, or other proceedings, except notices of trial or notices of inquiry.

176. In all causes in which there have been no proceedings for one year from the last proceeding had, the party, whether plaintiff or defendant, who desires to proceed, shall give a calendar month's notice to the other party of his intention to proceed. The summons of a Judge, if no order be made thereupon, shall not be deemed a proceeding within this rule. Notice of trial, though afterwards countermanded, shall be deemed a proceeding within it.

FORMS OF PROCEEDINGS.

The forms of proceedings contained in the schedule hereunder may be used in the cases to which they are applicable, with such alterations as the nature of the action, the description of the court in which the action is depending, the character of the parties, or the circumstances of the case, may render necessary; but any variance therefrom, not being in matter of substance, shall not affect their validity or regularity.

SCHEDULE.

1. Form of an Issue in General.

In the Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be.*]

The —— day of ——, in the year of our Lord 18—, [*date of declaration.*]

(*The Venue.*)—*A. B.* by *P. A.* his attorney [*or* "in person," *as the case may be, and as in the declaration,*] sues *C. D.*, who has been summoned to answer the said *A. B.* by virtue of a writ issued on the —— day of ——, in the year of our Lord —— [*the date of*

the first writ], out of her majesty's court of Queen's Bench, [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be,*] for, [&c. *copy the declaration from these words to the end, and all the pleadings, with their dates, writing each plea or pleading in a separate paragraph, and numbering the same as in the pleading delivered, and conclude thus*]: Therefore let a jury come, &c.

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2. Form of a Nisi Prius Record.

The Nisi Prius record will be a copy of the issue as delivered in the action. It must be engrossed on the parchment, and a more convenient shape than that heretofore in use must be adopted.

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3. Form of a Postea on a Verdict for Plaintiff on all the issues, where the Cause is tried in London or Middlesex, and where the Defendant appears at the Trial.

Afterwards on the —— day of ——, A.D. —— [*the first day of the sittings*], at the Guildhall of the city of London [*or* "at Westminster Hall, in the county of Middlesex," before the right honourable John Lord Campbell, her Majesty's chief justice assigned to hold pleas in the court of our lady the queen before the queen herself, [*or, if in the Common Pleas,* "before the right honourable Sir John Jervis, knight, her Majesty's chief justice assigned to hold pleas in her Majesty's Court of the Bench," *or in the Exchequer,* "before the right honourable Sir Frederick Pollock, knight, chief baron of her Majesty's Court of Exchequer,"] come the parties within mentioned by their respective attornies within mentioned, and a jury of the within county [*or* "city"] being summoned also come, who, being sworn to try the matters in question between the said parties, upon their oath say that, [&c. *state the affirmative or negative of the issue as it is found for the plaintiff, and in the terms adopted in the pleading.*] [*If there be several issues joined and tried, then say* "as to the first issue within joined upon their oath say that," (&c. *state the affirmative or negative of the issue as found for plaintiff,*) "and as to the second issue within joined, the jury aforesaid upon their oath say that," (&c. *so proceed to state the finding of the jury on all the issues.*)] [*Conclude with an assessment of the damages thus*]: And they assess the damages of the plaintiff on occasion of the premises within complained of by him, over and above his costs of suit, to £——, and for those costs to 40*s.* Therefore, &c.

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4. The like, where the Cause is tried at the Assizes.

Afterwards, on the —— day of ——, A.D. —— [*the commission day of the assizes*], at —— in the county [*or* "city"] of ——, before Sir ——, knight, and Sir ——, knight, justices of our said lady the queen, assigned to take the assizes in and for the within county [*or* "city and county," *or* "town and county," *as the case may be*],

come the parties within mentioned by their respective attornies within mentioned; and a jury of the said county [*or* "city and county, *or* "town and county," *as the case may be,*] being summoned also come, who, being sworn to try the matters in question between the said parties, upon their oath say, that [&c. *state the negative or affirmative of the issue as it is found for the plaintiff, and in the terms adopted by the pleading.*] [*If there be several issues joined and tried, then say,* "as to the first issue within joined upon their oath say, that," (&c. *state the affirmative or negative of the issue as it is found for the plaintiff,*) "and as to the second issue within joined, the jury aforesaid, on their oath aforesaid, say, that" (&c. *so proceed to state the finding of the jury on all the issues.*)] [*Conclude with stating an assessment of the damages, thus:*] And they assess the damages of the plaintiff on occasion of the premises within complained of by him, over and above his costs of suit, to £——, and for those costs to 40*s*. Therefore, &c.

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5. Form of a Judgment for Plaintiff on a Verdict in a Town Cause.

[*Copy the Nisi Prius record, and then proceed thus:*] Afterwards, on the —— day of —— in the year of our Lord —— [*day of signing final judgment*], come the parties aforesaid, by their respective attornies aforesaid [*or as the case may be, if they have not appeared by attornies,*] and the right honourable John Lord Campbell, her Majesty's chief justice assigned to hold pleas in the court of our lady the queen before the queen herself, [*or if in Common Pleas,* "the right honourable Sir John Jervis, Knight, her Majesty's chief justice assigned to hold pleas in her Majesty's Court of the Bench," *or if in the Exchequer,* the "right honourable Sir Frederick Pollock, knight, Chief Baron of her Majesty's Court of Exchequer," *or* "the honourable Sir ——, knight, before whom the said issue was [*or* 'issues were'] tried in the absence of her Majesty's Chief Justice, &c.," *as the case may be,*] hath sent hither his record had before him in these words: Afterwards [&c., *copy the postea*]. Therefore it is considered that the plaintiff do recover against the defendant the said monies by the jurors aforesaid in form aforesaid assessed [*or if the action be in debt and the jury do not assess the debt, but only the damages and forty shillings costs, then say* "do recover against the defendant the said debt of £——, and the monies by the jurors aforesaid in form aforesaid assessed"] and also £—— for his costs of suit by the court here adjudged of increase to the plaintiffs, which said monies and costs [*or* "debt, damages, and costs,"] in the whole amount to £——.

[*In the margin of the roll, opposite the words* "Therefore it is considered," *write* "Judgment signed the —— day of ——, A.D.——," *stating the day of signing the judgment.*]

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6. The like, in a Cause tried at the Assizes.

[*Copy the Nisi Prius record, and then proceed thus:*] Afterwards, on the —— day of ——, in the year of our Lord —— [*day of sign-*

ing final judgment,] come the parties aforesaid, by their respective attornies aforesaid [*or as the case may be*] ; and Sir ——, knight, and Sir ——, knight, justices of our lady the queen assigned to take the assizes in and for the said county [*or* "city and county," &c., *as the case may be*], before whom the said issue was [*or* "issues were"] tried, have sent hither their record had before them in these words. Afterwards, &c. [*Conclude as directed in the preceding form.*]

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7. Form of an Issue where it is directed to be tried by the Sheriff, &c.

[*Commence the issue as in the form No. 1 above prescribed. Then copy all the pleadings, and after the joinder of issue proceed as follows* :] And forasmuch as the sum sought to be recovered in this suit, and indorsed on the said writ of summons, does not exceed 20*l*., hereupon on the —— day of ——, in the year —— [*teste of writ of trial*], pursuant to the statute in that case made and provided, the sheriff [*or* "the judge of ——, being a court of record for the recovery of debt in the said county," *as the case may be*,] is commanded that he summon twelve, &c., who neither, &c., who shall be sworn truly to try the issue [*or* "issues"] above joined between the parties aforesaid, and that he proceed to try such issue [*or* "issues"] accordingly; and when the same shall have been tried that he make known to the court here what shall have been done by virtue of the writ of our lady the queen to him in that behalf directed, with the finding of the jury thereon indorsed, on the —— day of ——, &c.

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8. Form of a Writ of Trial before the Sheriff, &c.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, [*or* "to the judge of ——, being a court of record for the recovery of debt in our county of ——," *as the case may be*,] greeting: Whereas *A. B.* in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*] at Westminster, on the —— [*date of first writ of summons*] day of —— in the year of our Lord ——, impleaded *C. D.* in an action for [&c., *here recite the declaration in the past tense*,] and the plaintiff claimed £——: And whereas the defendant on the [*date of plea*] day of —— last, by —— his attorney, [*or as the case may be*,] came into our said court, and said [&c., *here cite the pleas and pleadings to the joinder of issue* :] And whereas the sum sought to be recovered in the said action, and indorsed on the writ of summons therein, does not exceed 20*l*; and it is fitting that the issue [*or* "issues"] joined as aforesaid should be tried before you the said sheriff [*or* "judge," *as the case may be*] : We therefore, pursuant to the statute in such case made and provided, command you that you do summon twelve free and lawful men of your county duly qualified according to law, who are in nowise akin to the plaintiff or to the defendant, who shall be sworn truly to try the said issue [*or* "issues"] joined between the parties aforesaid, and that you proceed to try

such issue [*or* "issues"] accordingly; and when the same shall have been tried in manner aforesaid we command you that you make known to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons or our said Exchequer," *as the case may be,*] at Westminster, what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed, on the —— day of —— next. Witness [*name of the chief justice, or of the chief baron if the action is in the Exchequer*] at Westminster, the —— day of —— in the year of our Lord ——.

9. Form of Indorsement on the Writ of Trial of the Verdict.

Afterwards, on the —— day of ——, in the year of our Lord —— [*day of trial*], before me, sheriff of the county of —— [*or* "judge of the court of ——,"] came as well the within-named plaintiff as the within-named defendant, by their respective attornies within-named, [*or as the case may be,*] and the jurors of the jury by me duly summoned, as within commanded, also came, and being duly sworn to try the issue [*or* "issues"] within mentioned on their oath said, that [&c. *here state the finding of the jury as in a postea on a trial at Nisi Prius.*]

The answer to *S. S.*, sheriff.

10. The like, in case a Nonsuit takes place.

[*Proceed as in the above form, but after the words* "duly sworn to try the issue within mentioned," *proceed as follows:*] and were ready to give their verdict in that behalf; but the plaintiff being solemnly called came not, nor did he further prosecute his said suit against the defendant.

11. Form of Judgment for the Plaintiff after Trial before the Sheriff.

[*Copy the issue, and then proceed as follows:*] Afterwards, on the —— day of ——, in the year of our Lord —— [*day of signing final judgment*], come the parties aforesaid, by their respective attornies aforesaid [*as the case may be*], and the said sheriff [*or* "judge," *as the case may be*], before whom the said issue [*or* "issues"] came on to be tried, hath sent hither the said last-mentioned writ, with an indorsement thereon, which said indorsement is in these words, to wit [*copy the indorsement*]. Therefore it is considered [&c., *conclude as in other cases. See the form, supra,* No. 5.]

WRITS OF EXECUTION.

1. Writ of Fieri Facias on a Judgment for Plaintiff.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of

——, greeting: We command you, that [*if sued out of the Court of Exchequer, say,* "We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] of the goods and chattels of *C. D.* in your bailiwick, you cause to be made £—— (*the amount of all the monies recovered by the judgment*) which *A. B.* lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be,*] recovered against him, whereof the said *C. D.* is convicted, together with interest upon the said sum at the rate of four pounds per centum per annum from the —— day of —— , in the year of our Lord —— (*a*), on which day the judgment aforesaid was entered up, and have that money, with such interest as aforesaid, before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.*; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness —— at Westminster, the —— day of ——, in the year of our Lord ——.

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2. Writ of Fieri Facias on a Judgment for Defendant.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that you cause to be made [*if sued out of the Court of Exchequer,* "that you omit not by reason of any liberty of your county, but that you enter the same, and cause to be made"] of the goods and chattels in your bailiwick of *A. B.*, £——, which lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be,*] were awarded to *C. D.*, for his costs of defence in an action lately prosecuted in our said court by the said *A. B.* against the said *C. D.*, whereof the said *A. B.* is convicted, together with interest on the said sum at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord —— (*a*), on which day the judgment aforesaid was entered up, and have you that money before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before our barons," *as the case may be,*] at Westminster, immediately after the execution hereof, to be rendered to the said *C. D.*; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf. And in

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(*a*) The day on which the judgment was entered up, or if entered up prior to the 1st of October, 1838, say "from the 1st day of October, in the year of our Lord 1838," omitting the words "on which day the judgment aforesaid was entered up."

what manner you shall have executed this our writ make appear to [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness, —— at Westminster, the —— day of ——, in the year of our Lord ——.

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3. Writ of Fieri Facias on a Rule for Payment of Money.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you that [*if sued out of the Court of Exchequer, say,* "We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] of the goods and chattels of *C. D.* in your bailiwick you cause to be made £——, which lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by a rule of our said court, dated the —— day of ——, A.D. ——, were ordered to be paid by the said *C. D.* to *A. B.*; and that of the said goods and chattels of the said *C. D.* in your bailiwick you further cause to be made interest upon the said sum at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord —— (*a*), on which day the said rule was made, and have that money, together with such interest as aforesaid, before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.*: and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness, —— at Westminster, the —— day of ——, in the year of our Lord ——.

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4. Writ of Fieri Facias on a Rule for Payment of Money and Costs.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that [*if sued out of the Court of Exchequer, say* "We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] of the goods and chattels of *C. D.* in your bailiwick you cause to be made £——, which lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*],

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(*a*) The day on which the rule was made, or if it were made prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838, omitting the words "on which day the said rule was made."

by a rule of our said court, dated the —— day of ——, in the year of our Lord ——, were ordered to be paid by the said *C. D.* to *A. B.*, together with certain costs in the said rule mentioned, which said costs have been taxed and allowed by our said court at £—— ; and that of the said goods and chattels of the said *C. D.* in your bailiwick, you further cause to be made interest upon the said two several sums at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord —— (*d*), and have those monies, together with such interest as aforesaid, before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.*; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, and have you there then this writ. Witness —— at Westminster, the —— day of ——, in the year of our Lord ——.

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5. Writ of Fieri Facias on a Rule for Payment of Costs only.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that [*if sued out of the Exchequer, say*, "We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] of the goods and chattels of *C. D.* in your bailiwick, you cause to be made £—— for certain costs which by a rule of our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], dated the —— day of ——, in the year of our Lord ——, were ordered to be paid by the said *C. D.* to *A. B.*, which said costs have been taxed and allowed by our said court at the said sum, and that of the said goods and chattels of the said *C. D.* in your bailiwick you further cause to be made interest upon the said sum at the rate of four pounds per centum per annum, from the —— day of ——, in the year of our Lord (*e*), and have that money, together with such interest as aforesaid, before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.*; and that you do all such things as by the statute passed in

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(*d*) The day on which the costs were taxed. If the costs were taxed after the rule made, and you seek to recover interest on the principal money from the date of the latter, you must alter the form accordingly.

(*e*) The day on which the costs were taxed, or if there has been more than one allocatur, the day on which the last allocatur was made.

the second year of our reign you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, and have you there then this writ. Witness —— at Westminster, the —— day of ——, in the year of our Lord ——.

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6. Writ of Fieri Facias on a Judgment of an Inferior Court removed into one of the Superior Courts.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that [*if sued out of the Court of Exchequer, say*, "We command you, that you omit not, by reason of any liberty of your county, but that you enter the same, and"] of the goods and chattels of *C. D.* in your bailiwick you cause to be made £——, which *A. B.* lately in —— (*insert the style of the court*), by the judgment of the said court, recovered against the said *C. D.* whereof the said *C. D.* is convicted, and which judgment was afterwards, on the —— day of ——, in the year of our Lord ——, removed into our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by virtue of an order of that our said court [*or* "of ——, one of the justices of that our said court," *as the case may be*], in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said order and upon the said removal were, on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], at £——; and we further command you, that of the said goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said £—— (*f*), together with interest on the said two several sums at the rate of four pounds per centum per annum from the said —— day —— of ——, in the year of our Lord —— (*g*); and that you have that money, with such interest as aforesaid, before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.*; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

(*f*) The costs attendant upon the removal of the judgment out of the inferior court into the superior court.

(*g*) The day on which the costs of removal were taxed.

7. Writ of Fieri Facias on a Rule or Order for Payment of money made in an Inferior Court, and removed into one of the Superior Courts.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: We command you that [*if sued out of the Court of Exchequer, say* "We command you, that you omit not by reason of any liberty of your county, but that you enter the same and"] of the goods and chattels of *C. D.* in your bailiwick you cause to be made £——, which lately in —— [*insert the style of the court*], by a rule [*or* "order"] of the said court entitled —— [*as the case may be*], were by the said court ordered to be paid by the said *C. D.* to *A. B.*; and which rule [*or* "order"] was afterwards, on the —— day of ——, in the year of our Lord ——, removed into our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by virtue of an order of that our said court, [*or* "of ——, one of the justices of that our said court," *as the case may be,*] in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order and upon the said removal were, on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be,*] at £——; and we further command you, that of the said goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said £—— (*h*), together with interest on the said two several sums at the rate of four pounds per centum per annum from the said —— day of —— (*i*), and that you have those monies, with such interest as aforesaid, before us [*or in the Common Pleas* "before our Justices," *or in the Exchequer* "before the Barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, to be rendered to the said *A.B.*; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our Justices," *or in the Exchequer*, "to the Barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

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8. Writ of Fieri Facias on a Rule or Order for Payment of Money and Costs made in an Inferior Court, and removed into one of the Superior Courts.

Victoria, by the grace of God of the United Kingdom of Great

(*h*) The costs of removing the rule of the inferior court into the superior court.

(*i*) The day on which the costs of removing the rule of the inferior court into the superior court were taxed.

Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that [*or if sued out of the Court of Exchequer, say* "We command you, that you omit not byreason of any liberty of your county, but that you enter the same, and"] of the goods and chattels of *C. D.* in your bailiwick you cause to be made £——, which lately in —— [*insert the style of the court,*] by a rule [*or* "order"] of the said court, entitled —— [*as the case may be,*] were by the said court ordered to be paid by the said *C. D.* to *A. B.*, and also £—— for the costs of the said rule [*or* "order"] by the said court also ordered to be paid by the said *C. D.* to the said *A. B.*; which said rule [*or* "order"] was afterwards, on the —— day of ——, in the year of our Lord ——, removed into our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*] by an order of that our said court [*or* of "one —— of the justices of that our court," *as the case may be,*] in pursuance of the statute in such case made and provided; and the costs and charges attendant upon the application for the said last-mentioned order and upon the said removal were, on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be,*] at £——; and we further command you, that of the said goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said £—— (*k*), together with the interest on the said three several sums, at the rate of four pounds per centum per annum, from the said —— day of ——, in the year of our Lord —— (*l*), and that you have those monies, with such interest as aforesaid, before us [*or in the Common Pleas* "before our Justices," *or in the Exchequer* "before the Barons of our Exchequer," *as the case may be,*] at Westminster immediately after the execution hereof, to be rendered to the said *A. B.*; and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas,* "to our Justices," *or in the Exchequer,* "to the barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

9. Writ of Elegit on a Judgment for Plaintiff.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: Whereas, *A. B.*, lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by the judgment of the same court, recovered against *C. D.* £—— [*the amount of all the monies recovered by the judgment*],

(*k*) The costs of removing the rule from the inferior court into the superior court.

(*l*) The day on which the costs of removing the rule from the inferior court into the superior court were taxed.

whereof the said *C. D.* is convicted, and afterwards the said *A. B.* came into our said court, and, according to the form of the statutes in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person in trust for him was seised or possessed of on the —— day of ——, in the year of our Lord —— (*m*), on which day the judgment aforesaid was entered up, or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, according to the form of the said statutes, until the said sum, together with interest thereon at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord —— (*n*), shall have been levied: Therefore we command you that, [*if sued out of the Court of Exchequer, say* "Therefore we command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] without delay, you cause to be delivered to the said *A. B.* by a reasonable price and extent all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said —— day of —— (*o*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said £ ——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case may be.*] at Westminster, immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ. Witness —— at Westminster, the —— day of ——, in the year of our Lord ——.

(*m*) The day on which the judgment was entered up.

(*n*) The day on which the judgment was entered up, or in case the judgment was entered up prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838."

(*o*) The day on which the judgment was entered up.

10. Writ of Elegit on a Rule for Payment of Money.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: Whereas lately in our Court of Queen's Bench [*or* "Common Pleas" *or* "Exchequer of Pleas" *as the case may be*], by a rule of the said court, dated the —— day of ——, in the year of our Lord ——, the sum of £ —— was ordered to be paid by *C. D.* to *A. B.*, and afterwards the said *A. B.* came into our said court, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the —— day of ——, in the year of our Lord ——, (*p*), on which day the said rule was made, or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum, together with interest upon the same at the rate of four pounds per centum per annum from the said —— day of ——, in the year of our Lord ——, (*p*) shall have been levied. Therefore we command you that, [*If sued out of the Court of Exchequer, say* "Therefore we command you, that you omit not, by reason of any liberty of your county, but that you enter the same, and"] without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said —— day of —— (*p*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said £ ——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case way be*,] at Westminster, immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and

(*p*) The day on which the rule was made.

appraisement, and have you there then this writ. Witness —— at Westminster, the —— day of ——, in the year of our Lord ——.

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11. Writ of Elegit on a Rule for Payment of Money and Costs.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: Whereas, lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by a rule of the said court, dated the —— day of ——, in the year of our Lord ——, the sum of £—— was ordered to be paid by *C. D.* to *A. B.*, together with certain costs in the said rule mentioned, which said costs were afterwards, on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said court at £——; and afterwards the said *A. B.* came into our said court, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of on the—— day of ——, in the year of our Lord —— (*q*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively according to the nature and tenure thereof, to him and to his assigns, until the said two several sums, together with interest upon the same at the rate of four pounds per centum per annum from the said —— day of ——, in the year of our Lord —— (*q*), shall have been levied. Therefore we command you, that, [*If sued out of the Court of Exchequer, say*, "Therefore we command you, that you omit not, by reason of any liberty of your county, but that you enter the same, and"] without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person in trust for him, was seised or possessed of on the said —— day of —— (*q*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £—— and £——,

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(*q*) The day on which the costs of the rule were taxed.

together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

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12. Writ of Elegit on a Judgment of an Inferior Court removed into one of the Superior Courts.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: Whereas *A. B.* lately in ——[*insert the style of the court*], by the judgment of the said court, recovered against *C. D.* £——, whereof the said *C. D.* is convicted: And whereas the said judgment was afterwards, on the —— day of ——, in the year of our Lord ——, removed into our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by virtue of an order of that our said court [*or* "of ——, one of the justices of that our said court," *as the case may be*], in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said order and upon the said removal were afterwards, on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], at £——; and afterwards the said *A. B.* came into that our said court [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said —— day of ——, in the —— year of our Lord aforesaid (*r*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums, together with interest upon the same at the rate of four pounds per centum per annum from the said —— day of ——, in the year of our Lord —— (*r*), shall have been levied. Therefore we com-

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(*r*) The day on which the costs of removing the judgment were taxed.

mand you, that [*If sued out of the Court of Exchequer, say,* "Therefore we command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of on the said —— day of —— (*s*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of —— and £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the Barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

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13. Writ of Elegit on a Rule or Order for Payment of Money made in an Inferior Court, and removed into one of the Superior Courts.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: Whereas lately in —— [*insert the style of the court*], by rule [*or* "order"] of the said court, entitled —— [*as the case may be*], the sum of £—— was by the said court ordered to be paid by *C. D.* to *A. B.*: And whereas the said rule [*or* "order"] was afterwards, on the —— day of ——, in the year of our Lord ——, removed into our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by virtue of an order of that our said court [*or* "of ——, one of the justices of that our said court," *as the case may be*], in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order and upon the said removal were afterwards, on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], at £——, and afterwards the said *A. B.* came into that our

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(*s*) The day on which the costs of removing the judgment were taxed.

said court, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person in trust for him, was seised or possessed of on the said —— day of ——, in the year of our Lord —— (*t*), or at any time afterwards, or over which the said *C. D.* on the said —— day of —— (*t*), or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums, together with interest on the same at the rate of four pounds per centum per annum from the said —— day of —— (*t*), shall have been levied. Therefore we command you, that [*If sued out of the Court of Exchequer, say*, "Therefore we command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of on the said —— day of —— (*t*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said several sums of £—— and £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas*, "to our justices," *or in the Exchequer* "to the Barons of the Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

(*t*) The day on which the costs of removing the rule of the inferior court into the superior court were taxed.

14. Writ of Elegit on a Rule or Order for Payment of Money and Costs made in an Inferior Court, and removed into one of the Superior Courts.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of ——, greeting: Whereas lately, in —— [*insert the style of the Court*], by a rule [*or* "order"] of the said Court, entitled —— [*as the case may be*], the sum of £—— was by the said Court ordered to be paid by *C. D.* to *A. B.*, together with the costs of the said rule [*or* "order"], which said costs were afterwards, on the —— day of —— in the year of our Lord ——, taxed and allowed by the said Court at £——: And whereas the said rule [*or* "order"] was afterwards, on the —— day of —— in the year of our Lord ——, removed into our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by virtue of an order of that our said Court, *or* "of ——, one of the Justices of that our said Court," *as the case may be*], in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order, and upon the said removal, were afterwards, on the —— day of —— in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], at £——: And afterwards the said *A. B.* came into our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], and, according to the form of the Statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person in trust for him was seised or possessed of on the said —— day of —— (*u*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said three several sums, together with interest upon the same at the rate of four pounds per centum per annum from the said —— day of —— (*u*), shall have been levied. Therefore we command you, that [*if sued out of the Court of Exchequer, say*, "Therefore we command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] without delay you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, includ-

(*u*) The day on which the costs of removing the rule of the inferior court into the superior court were taxed.

ing lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said —— day of —— (*x*), or at any time afterwards, or over which the said *C. D.* on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said three several sums of £ ——, and £ ——, and £ ——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our justices," *or in the Exchequer* "to the Barons of our Exchequer," *as the case may be,*] at Westminster immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ. Witness at —— Westminster, the —— day of ——, in the year of our Lord.

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15. Writ of Capias ad Satisfaciendum on a Judgment for Plaintiff.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that you [*if sued out of the Court of Exchequer, say* "We command you that you omit not by reason of any liberty of your county, but that you enter the same, and"] take *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in the Common Pleas* "before our Justices," *or in the Exchequer* "before the Barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, to satisfy *A. B.* £ —— [*the amount of all the monies recovered by the judgment*] which the said *A. B.* lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be,*] recovered against the said *C. D.*, whereof the said *C. D.* is convicted, together with interest upon the said sum, at the rate of four pounds per centum per annum, from the —— day of ——, in the year of our Lord —— (*y*), on which day the judgment aforesaid was entered up, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

(*x*) The day on which the costs of removing the rule of the inferior court into the superior were taxed.

(*y*) The day on which the judgment was entered up, or if entered up prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838," omitting the words "on which day the judgment was entered up."

16. Writ of Capias ad Satisfaciendum on a Judgment for Defendant.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you, that you take [*if sued out of the Court of Exchequer, say,* "that you omit not by reason of any liberty of your county, but that you enter the same and take"] *A. B.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in the Common Pleas* "before our Justices," *or in the Exchequer* "before the Barons of our Exchequer," *as the case may be,*] at Westminster, immediately after the execution hereof, to satisfy *C. D.* £——, which lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be,*] were awarded to the said *C. D.*, for his costs of defence in an action lately prosecuted in our said court by the said *A. B.* against the said *C. D.*, whereof the said *A. B.* is convicted, together with interest upon the said sum at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord —— (*y*), on which day the judgment aforesaid was entered up, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

17. Writ of Capias ad Satisfaciendum on a Rule for Payment of Money.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff or ——, greeting: We command you, that you take [*if sued out of the Court of Exchequer, say* "We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and take"] *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in the Common Pleas* "before our justices," *or in Exchequer* "before the Barons of our Exchequer," *as the case may be*], at Westminster immediately after the execution hereof, to satisfy *A. B.* £——, which lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by a rule of our said court dated the —— day of ——, in the year of our Lord ——, were ordered to be paid by the said *C. D.* to the said *A. B.*, and further to satisfy the said *A. B.* interest upon the said sum at the rate of four pounds per centum per annum from the day and year aforesaid (*z*), and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

(*y*) The day on which the judgment was entered up, or if entered up prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838," omitting the words "on which day the judgment aforesaid was entered up."

(*z*) The day on which the rule was made, or if it were made prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838."

18. Writ of Capias ad Satisfaciendum on a Rule for Payment of Money and Costs.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that you take [*if sued out of the Court of Exchequer, say* "We command you, that you omit not by reason of any liberty of your county, but that you enter the same and take"] *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the Barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, to satisfy *A. B.* £——, which lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by a rule of our said court dated the —— day of ——, in the year of our Lord ——, were ordered to be paid by the said *C. D.* to the said *A. B.*, together with certain costs in the said rule mentioned, which said costs have been taxed and allowed by our said court at £—— [*the amount of the allocatur, or allocaturs if one more than one*], and further to satisfy the said *C. D.* the said last mentioned sum, together with interest upon the said two several sums at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord —— (*a*), on which day the said costs were taxed, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

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19. Writ of Capias ad Satisfaciendum on a Rule for Payment of Costs only.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that you take [*if sued out of the Court of Exchequer, say* "We command you, that omit not by reason of any liberty of your county, but that you enter the same, and take"] *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you may his body before us [*or in Common Pleas,* "before our justices," *or in Exchequer* "before the Barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, to satisfy *A. B.* £—— for certain costs, which by a rule of our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], dated the —— day of ——, in the year of our Lord ——, were ordered to be paid by the said *C. D.* to the said *A. B.*, which said costs have been taxed and allowed by our said court at the said sum, and further to satisfy the said *C. D.* interest upon the said sum at the rate of four pounds per centum per annum from the —— day of ——, in the year of our

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(*a*) The day on which the costs of the rule were taxed. If interest be claimed on the principal money from the date of the rule, alter the form accordingly.

Lord ——(*b*), and have there then this writ. Witness, —— at Westminster, on the —— day of ——, in the year of our Lord ——.

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20. Writ of Capias ad Satisfaciendum on a Judgment in an Inferior Court, removed into one of the Superior Courts.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that you take [*if sued out of the Court of Exchequer, say,* "We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and take"] *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the barons of our Exchequer," *as the case may be*], at Westminster, immediately after the execution hereof, to satisfy *A. B.* £——, which the said *A. B.* lately in —— [*insert the style of the court*], by the judgment of the said court recovered against the said *C. D.*, whereof the said *C. D.* is convicted; and which judgment was afterwards, on the —— day of ——, in the year of our Lord ——, removed into our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by virtue of an order of that our said court [*or* "of——, one of the justices of that our said court," *as the case may be*], in pursuance of the statute in such case made and provided, and the costs and charges attendant upon the application for the said order and upon the said removal were on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*] at £——, and further to satisfy the said *A. B.* the said £—— (*c*), together with interest upon the said two several sums at the rate of four pounds per centum per annum from the said —— day of ——, in the year of our Lord —— (*d*), and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

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21. Writ of Capias ad Satisfaciendum on a Rule or Order of an Inferior Court for Payment of Money, removed into one of the Superior Courts.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that you take [*if sued out of the Court of Exchequer, say,* "We command you, that you omit not by

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(*b*) The day on which the costs of the rule were taxed, or, if there have been several allocaturs, the day on which the last allocatur was made.

(*c*) The costs attendant upon the removal of the judgment out of the inferior court into the superior court.

(*d*) The day on which the costs of removal were taxed.

reason of any liberty of your county, but that you enter the same, and take "] C. D., if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in the Common Pleas*, " before our Justices," *or in the Exchequer*, " before the barons of our Exchequer," *as the case may be*,] at Westminster, immediately after the execution hereof, to satisfy *A. B.* £ ——, which lately in —— [*insert the style of the court*], by a rule [*or* " order "] of the said court, entitled —— [*as the case may be*], were ordered to be paid by the said *C. D.* to the said *A. B.*, and which rule [*or* " order "] was afterwards, on the —— day of ——, in the year of our Lord ——, removed into our Court of Queen's Bench, [*or* " Common Pleas," *or* " Exchequer of Pleas," *as the case may be*], by an order of that our said court [*or* " of ——, one of the justices of that our said court," *as the case may be*], in pursuance of the statute in such case made and provided, and the costs and charges attendant upon the application for the said last mentioned order and upon the said removal were on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* " Common Pleas," *or* " Exchequer of Pleas," *as the case may be*,] at £ ——, and also to satisfy the said *A. B.* the said £ —— (*e*), together with interest on the said two several sums at the rate of four pounds per centum per annum from the said —— day of ——, in the year of our Lord —— (*f*), and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

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22. Writ of Capias ad Satisfaciendum on a Rule or Order of an Inferior Court for Payment of Money and Costs, removed into one of the Superior Courts.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that you take [*if sued out of the Court of Exchequer*, " We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and take "] *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [*or in Common Pleas*, " before our justices," *or in Exchequer*, " before the barons of our Exchequer," *as the case may be*,] at Westminster, immediately after the execution hereof, to satisfy *A. B.* £ ——, which lately in [*insert the style of the court*], by a rule [*or* " order "] of the said court, entitled, &c. [*as the case may be*], were by the said court ordered to be paid by the said *C. D.* to the said *A. B.*, and also £ —— for the costs of the said rule, by the said court also ordered to be paid by the said *C. D.* to the said *A. B.*, which said rule [*or* " order "] was afterwards, on the —— day of ——, in the year of our Lord ——,

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(*e*) The costs of removing the rule of the inferior court into the superior court.

(*f*) The day on which the costs of removal were taxed.

removed into our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*], by an order of that our said court [*or* "of ——, one of the justices of that our said court," *as the case may be*,] in pursuance of the statute in such case made and provided, and the costs and charges attendant upon the application for the said last mentioned order and upon the said removal were on the —— day of ——, in the year of our Lord ——, taxed and allowed by our said Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*] at £ ——, and also to satisfy the said *A. B.* the said £ —— (*g*), together with interest on the said three several sums at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord —— (*h*), and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

---

23. Writ of Habere Facias in Ejectment upon a Judgment by Default.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: Whereas *A. B.* lately in the Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer Pleas," *as the case may be*], by the judgment of the same court, recovered possession of —— [*here describe the property as in the writ of ejectment, or if part only of the land has been recovered, describe such part as in the judgment*], with the appurtenances, in your bailiwick: Therefore we command you, that, [*if sued out of the Court of Exchequer, say*, "Therefore we command you, that you omit not by reason of any liberty of your county, but that you enter the same, and "] without delay, you cause the said *A. B.* to have possession of the said land and premises with the appurtenances. And in what manner you have executed this our writ make appear to us [*or in Common Pleas* "to our justices," *or in Exchequer* "to the barons of our Exchequer," *as the case may be*,] at Westminster, immediately upon the execution hereof, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

---

24. Writ of Habere Facias and Fieri Facias for Costs upon a Judgment for Plaintiff in Ejectment where Defendant has appeared.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: Whereas *A. B.* lately in our Court of Queen's

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(*g*) The costs of removing the rule from the inferior court into the superior court.

(*h*) The day on which the costs of removing the rule from the inferior court were taxed.

Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*] recovered possession of —— [*here describe the property as in the writ of ejectment, or if part only of the land has been recovered, describe such part as in the judgment*], with the appurtenances, in your bailiwick, in an action of ejectment at the suit of the said *A. B.* against *C. D.*: Therefore we command you, that, without delay, you cause the said *A. B.* to have possession of the said land and premises with the appurtenances; and we also command you, that [*if sued out of the Court of Exchequer, say*, "and we also command you, that you omit not by reason of any liberty of your county, but that you enter the same, and that"] of the goods and chattels of the said *C. D.* in your bailiwick you cause to be made £ ——, which the said *A. B.* lately in our said court recovered against the said *C. D.* for the said *A B.*'s costs of the said suit, whereof the said *C. D.* is convicted; together with interest upon the said sum at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord ——, on which day the judgment aforesaid was entered up, and have that money and interest aforesaid in our said court, immediately after the execution hereof, to be rendered to the said *A. B.*; and that you do all things as by the statute passed in the second year of our reign you are authorized and required to do in that behalf. And in what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the barons of our Exchequer," *as the case may be*,] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness ——, at Westminster the —— day of ——, in the year of our Lord ——.

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25. Writ of Fieri Facias for Costs on a Judgment for Plaintiff in Ejectment where Defendant has appeared.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting: We command you, that [*if sued out of the Court of Exchequer*, "We command you, that you omit not by reason of any liberty of your county, but that you enter the same, and"] of the goods and chattels of *C. D.* in your bailiwick you cause to be made £ ——, which *A. B.* lately in our Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas," *as the case may be*] recovered against him, for the said *A. B.*'s costs of suit in an action of ejectment brought by the said *A. B.* against the said *C. D.* in that court, whereof the said *C. D.* is convicted; together with interest upon the said sum at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord ——, on which day the judgment aforesaid was entered up; and have that money, with such interest as aforesaid, before us [*or in the Common Pleas* "before our justices," *or in the Exchequer* "before the Barons of our Exchequer," *as the case may be*,] at Westminster, immediately after the execution hereof, to be rendered to the said *A. B.*; and that you do all things as by the statute passed in the second year of our reign you are authorized and required to do in that behalf. And in

what manner you shall have executed this our writ make appear to us [*or in the Common Pleas* "to our Justices," *or in the Exchequer* "to the Barons of our Exchequer," *as the case may be*] at Westminster, immediately after the execution hereof, and have you there then this writ. Witness ——, at Westminster, the —— day of ——, in the year of our Lord ——.

Signed by the JUDGES.

11*th January*, 1853.

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